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Ct.29

CRR 5178 of 2025

08.04.2026

Bd.

Rajesh Kumar Prasad
-vs-
The State of West Bengal & Ors.

Mr. Juin Dutta Chakraborty
Mr. Bidan Modal ... for the petitioner

Mr. Manisha Sharma
Mr. Asif Dewan ... for the State.

Mr. Sabyasachi Mukherjee
Mr. Mrinmoy Nandy
Ms. Debjani Chakraborty ... for the opposite party Nos. 2 & 3.

Affidavit of service filed by the petitioner is taken on record.

In this application the petitioner has prayed for quashing of the entire proceeding being GR Case No. 6817 of 2022 presently pending before learned 5th Judicial Magistrate, Barrackpore, North 24 Parganas.

Petitioner's case is that he became the absolute owner in respect of L.R. Dag No. 4360 by dint of registered gift deed dated 22nd January, 2019 executed by Smt. Shabtri Devi who relinquished her entire share over the land in question in favour of the present petitioner. Thereafter the petitioner has mutated his name for construction of a building over the said plot of land.

The instant FIR has been lodged against the petitioner alleging that the defacto-complainant recently came to know that the accused person/petitioner has got transferred some portion of the landed property in his own name by way of a registered deed of gift, executed by the mother of the complainant namely Smt. Shabtri Debi, misrepresenting him as her son and thereby the

petitioner has cheated the defacto-complainant, who is actually the daughter of admitted owner Shabtri Devi.

Being aggrieved by the aforesaid proceeding, learned counsel for the petitioner submits that in the complaint the private opposite parties alleged about fraudulent, dishonest activities on the part of the petitioner upon their mother who is still alive and till date residing with the present petitioner. He further submits that though Shabtri Debi had also executed deed of gift in favour of the opposite parties in respect of other properties where he has never raised objection. Now, he has alleged that the petitioner herein has wrongfully confined their mother with him for the purpose of alleged wrongful gain. He further submits that the opposite party herein have approached different forum in respect of the same property and after a gap of three years from the date of transfer by way of execution of the deed of gift, he has lodged the instant complaint with malicious intention and ill motive. Therefore, he prayed for quashing of the instant proceeding.

Learned counsel for the opposite party nos. 2 and 3 raised objection to such prayer.

Learned counsel for the State placed the case diary and leaves the prayer made by the petitioner to the discretion of the court.

I have gone through the materials in the case diary and it appears that after completion of investigation police has submitted charge-sheet against the petitioner under section 420 IPC.

In order to constitute offence of cheating under the definition of Section 415 of the IPC, the essential elements are

(A) Deception of any person

(B) (i) Fraudulently or dishonestly inducing that person

(a) To deliver any property to any person

(b) To consent that any person shall retain any property, or

(ii) Intentionally inducing that person to do or omit to do anything which he would not do or omit, if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property.

From the aforesaid definition it is clear that it is the intention which is the gist of the offence.

On a perusal of FIR it is clear that the only allegation leveled against the petitioner is that he has managed to get the property transferred in his name misrepresenting him as her son to make wrongful loss to Smt. Shabtri Debi, executor of gift deed and wrongful gain for himself.

Admittedly, Shabtri Debi/executor of deed is alive and during investigation, police has not examined her. It is true that in the gift deed petitioner has been described as son of Shabtri Debi and father's name of the petitioner is given as Late Mahabir Prosad, who is the husband of said Shabtri Devi. It is also argued on behalf of petitioner that civil litigations are pending questioning the legality and validity of said gift deed.

There is nothing in record that by mis-describing himself as son of Shabtri Debi petitioner has cheated her. There is also

nothing to show that by making such mis-description about his status, he has induced Shabtri Debi to execute the deed of gift. Even in the case of cheating by personation, there must be cheating in addition to personation and the personation must be for cheating. Here neither from any statement of Shabtri Debi or from the statement of any other witness, it has not even prima facie established that even if there was any personation, that was done for the purpose of cheating. It is no doubt true that under the explanation to section 415 IPC, a dishonest concealment of facts is a deception within the meaning of the section, but deception by itself does not amount to cheating unless the person so deceived was induced to execute and register deed of gift in favour of petitioner, which she would not have done, if she were not deceived.

Here said Shabtri Debi, who is still alive is the best witness to support complainant's case that she would not have executed gift deed if she were not deceived. Non examination of such vital witness by prosecution gives rise reason to believe that if she was examined she would not have supported prosecution case of cheating.

In order to constitute offence of cheating in the present case, it was necessary for the prosecution from the materials collected during investigation, that petitioner managed to procure gift deed by giving out alleged false identity of his parents and Shabtri would not had executed gift deed, if petitioner had given correct name of his parents. In the instant case, there was however no evidence on this point. All that is appearing from the

copy of the deed that in the gift deed, parents name of the petitioner might not have been correctly written and correct name of petitioner's parents might have been suppressed by either party at the time of execution and registration of gift deed. But in the absence of anything to show that such suppression has actually induced Shabtri Debi to execute gift deed, no case of cheating or cheating by personation is made out against the petitioner.

In fact, the materials placed before the Court including the FIR and the statements recorded during investigation does not disclose any cognizable offence far from offence under section 420 of the IPC against the petitioner. Therefore, further continuance of the instant proceeding will be a mere abuse of the process of the Court.

In such view of the matter, the instant application being CRR 5178 of 2025 is allowed.

The impugned proceedings being GR Case No. 6817 of 2022 presently pending before learned 5th Judicial Magistrate, Barrackpore, North 24 Parganas stands quashed.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Dr. Ajoy Kumar Mukherjee, J.)