IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

CRR 919 of 2023

Atindra Nath Mondal
-Vs-
The State of West Bengal & Ors.

For the Petitioner: Mr. Bijoy Adhikary,
Mr. Ashim Ghoshal,
Mr. Ushananda Jana,
Ms. Susmita Adhikary,

Heard on: April 12, 2023.

Judgment on: 12 June, 2023.

BIBEK CHAUDHURI, J. : –

1. The order dated 06th March, 2023 passed by the Learned Additional Chief Judicial Magistrate, 2nd Court, Baruipur, South 24-Parganas in relation to Sonarpur P.S. Case No.944 of 2020, dated 18th November, 2020 for the offence punishable under Section 420/34 of Indian Penal Code and all others therein is assailed in the instant revision.

2. The background of the case leading to filing of the instant revision is as follows:

3. One Atindra Nath Mondal, the petitioner is an octogenarian aged about 85 years suffering from cancer and has an ailing wife of 76 years. He is the lawful owner of a house along with some landed property

situated at Mouza- Kusti, J.L. No. 107, R.S. Dag Nos. 499, 507 and 508 corresponding to L.R. Dag Nos. 512, 523 and 524 under R.S. Khatian No.311, corresponds to L.R. Khatian No. 1 in District South 24-Parganas Police Station-Sonarpur. Due to paucity of funds he wanted to sell 4.5 decimals of land and the assets and the opposite parties No.2 to 4, namely, Tapasi Mondal, Sanjay Mondal and Kutubuddin Mallick, who taking undue advantage of his failing health made him sign a fabricated document and treated the same as a genuine one. The petitioner states that he was completely unaware of the forgery committed intentionally and that the opposite parties No.2 to 4 knowing that the signed document would be a valuable security indeed him to sign the said document, which he did without knowledge. The opposite parties trespassed into the petitioner's house on 07.02.2020 and, with force, tried to oust the petitioner from his lawful portion showing that the petitioner had sold out the entire land along with the house to them and not the 4.5 decimals of land only. He complained to the A.D.S.R. Sonarpur and discovered that a deed of sale being no.160800362 for the year 2020 clearly recited that he had sold his land along with the house for a considerable amount of Rs.36,52,500/- only, where in reality he had received only Rs. 10,00,000/- vide two cheques bearing no. 000058 and 000059 drawn on Bandhan Bank, Rajpur Branch. He also intimated the Officer-in -Charge of Sonarpur Police Station, but the complaint was treated as Sonarpur Police Station F.I.R. No. 944 of 2020 dated 18.11.2020 and for the offence under Section 420/34 of Indian Penal Code.

4. Upon receiving complain the local authorities did not provide any assistance or take steps and with the help of the local Panchayat Prodhan and other members' intervention in the matter, the petitioner was forced by the opposite parties for settling the matter and the opposite parties deposited a further payment Rs. 10,00,000 (Rupees Ten Lakhs) only by way of three cheques bearing No. 000011, 00013 and 000060 drawn on Bandhan Bank Rajpur Branch dated 26.08.2020 deposited in the said Bank. Moreover, after coming to know of the F.I.R. filed against them, the opposite parties threatened the petitioner due to which he moved before the Hon'ble High Court at Calcutta vide W.P.A. No.11673 (W) of 2021. On 08.08.2022 Hon'ble Shampa Sarkar, J. made an observation that the petitioner had received an amount lesser then the scheduled amount in the deed of conveyance and therefore it indicates that the deed of sale had been obtained by fraud and forgery which seems to be a fabricated one. Therefore, a petition was filed under Section 173(8) of Code of Criminal Procedure contending that the learned Magistrate should direct further investigation as he believed that he was highly prejudiced by the mala fide investigation.

5. After considering the fact that the petitioner is a senior citizen who is a cancer patient, the learned Magistrate remarked that he was in charge of the ld. Additional Chief Judicial Magistrate 1st Court as the court was lying vacant for the reason of transfer of the Presiding Officer. Moreover, he was also in charge of the Judicial Magistrate's Court who was on casual leave. The Court, therefore, showed his inability to shift the

date due to additional judicial and administrative work and fixed the date as 06.06.2023 for framing of charges, if any and hearing of the petition filed by the defacto complainant under Section 173(8) of the Cr.P.C as well as his prayer for recording his statement under Section 164 of the Cr.P.C.

6. At this juncture, the learned ACJM remarked that the learned Advocate for the petitioner namely Shri. Supriyo Ghosh and Anr. started to make repeated submissions regarding the health condition of the petitioner and therefore, requested them not to make any agitation in the Court and disrupt the proceedings of other cases. Moreover, the learned advocates did not allow to take up other cases fixed for hearing on 06.03.2023. The valuable judicial hours of the Court got wasted due to the disruptions by the learned Advocates and other cases could not have been heard.

7. Therefore, the main issue in this instant petition is whether the date for the hearing can be fixed at an earlier date, i.e, before 06.06.2023, given the failing health of the petitioner. The petitioner is severely ill as he is a cancer patient and is of 85 years and he has to take care of his ailing wife of 76 years. Given his old age and health condition the Court, on humanitarian grounds the court might prepone the date of hearing of the petition under Section 173(8) of the Cr.P.C. This Court sees no harm in preponing the date by a few days if it benefits the petitioner, given his serious health condition. He should not suffer because of administrative problems of the Court.

8. At the same time, it reflects from the order sheet that when the learned Magistrate expressed his inability to prepone the date of hearing of the application under Section 173(8) of the Cr.P.C along with petitioner's prayer for recording his statement under Section 164 of the Cr.P.C, the learned Advocates appearing on behalf of the petitioner could not control their excitement and they insisted time and again on acceding to their prayer on behalf of the complainant. The order sheet further reflects that the learned Magistrate requested the concerned learned Advocates not to disturb her judicial function, but they did not pay any heed to her request.

9. The learned Magistrate thereafter only observed that such demeanor on behalf of the learned Senior Advocates appearing for the defacto complainant was unwarranted and they were cautioned not to repeat such act and cause unnecessary ruckus in the court room failing which the trial court shall be bound to take suitable and necessary action.

10. The above observation allegedly caused serious humiliation of the learned Advocates.

11. The learned Advocates appearing on behalf of the petitioner spent more time before this Court to prove a point that the learned Advocates in the trial court were dishonoured and humiliated by alleged disgraceful observation made by the learned court below. The learned Advocates on behalf of the petitioner spent little time to move the cause of the petitioner. He is more vociferous against the observation made by the

learned Magistrate in the impugned order against the learned Advocates for the trial court.

12. In support of his contention he refers to paragraph 123 of **Vishwanathan Vs. Abdul Wahid** reported in **1963 Supreme Court 1 (V 50 C 1),** Justice Hidayatullah, at paragraph 123, opined that:

> *123."The rule of law about judicial conduct is as strict, as it is old. No judge can be considered to be competent to hear a case in which is directly or indirectly interested. A proved interest in a Judge not only disqualifies him but renders his judgement a nullity. There is yet another rule of judicial conduct which bears upon the hearing of case. In that the judge is expected to be serene and even-handed, even though his patience may be sorely tried and the time of the Court appear to be wasted. This is based on the maxim which is often repeated that justice should not only be done but should be seen to be done. No litigant should leave the Court feeling reasonably that his case was not heard or considered on its merit. If he does, then justice, even though done in if t the case, fails in the doing of it".*

13. In **A.M. Mathur V Pramod Kumar Gupta [(1990) 2 SCC 533]** at paragraph 13 and 14, Justice Shetty opined that:

> *13. "Judicial restraint and discipline are as necessary to the orderly administration of justice as they are to the effectiveness of the army. The duty of restraint, this humility of function should be constant theme of our judges. This quality in decision making is as much necessary for judges to command respect*

> *as to protect the independence of the judiciary. Judicial restraint in this regards might better be called judicial respect, that is respect by the judiciary. Respect to those who come before the Court as well to other co-ordinate branches of the State, the executive and the legislature. There must be mutual respect. When these qualities fail or when litigants and public believe that the judge has failed in these qualities, it would neither be good for the judge nor for the judicial process."*
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> *14. "The Judge's Bench is a seat of power. Not only do judges have power to make binding decision, their decisions legitimate the use of power by other officials. The judges have the absolute and unchallengeable control of the court domain. But they cannot misuse their authority by intemperate comments, undignified banter or scathing criticism of counsel, parties or witnesses. We concede that the court has the inherent power to act freely upon its own conviction on any matter coming before it for adjudication, but it is a general principle of the highest importance to the proper administration of justice that derogatory remarks ought not to be made against persons or authorities whose conduct comes into consideration unless it is absolutely necessary for the decision of the case to animadvert on their conduct."*

14. Having heard the learned Advocate for the petitioner, this Court likes to record that judicial restraint and judicial discipline does not mean that even in extreme cases the Judicial Officer is not entitled to take

exception against an act of an Advocate representing a party. There are catena of instances where the learned Advocates even faced contempt for causing serious disturbance in course of discharging judicial function. In **Vishwanathan (supra)** the Hon'ble Supreme Court in paragraph 125 held as hereunder:-

> 125. *"If every remark of a Judge made from the Bench is to be construed `as indicating prejudice, I am afraid most Judges will fail to pass the exacting test. In the course of arguments, Judges express opinions tentatively formed, sometimes even strongly; but that does not always mean that the case has been prejudged. An argument in Court can never be effective if C.J., the Judges do not sometimes point out what appears to be the underlying fallacy in the apparent plausibility thereof, and any lawyer or litigant, who forms an apprehension on that score, cannot be said to be reasonably doing so. It has frequently been noticed that the objection of a Judge breaks down on a closer examination, and often enough, some Judges acknowledge publicly that they were mistaken. Of course, if the Judge unreasonably obstructs the flow of an argument or, does not allow it to be raised, it may be said that there has been no fair hearing."*

15. It is not expected that a judge should be a mute spectator. He must take active participation in judicial proceeding. While taking active participation if the learned Judge finds that the learned Counsel on behalf of any of the parties is trying to disturb judicial function of a Court, he has every right to pass an order by caution to the learned Advocate.

16. In the impugned order, it is clearly found that the learned Magistrate was over burdened with additional charges of two more courts

therefore he expressed his inability to prepone the date of hearing of the application under Section 173(8) of the Cr.P.C filed by the petitioner. Since the situation of the court aggravated due to repeated instances by the learned Advocates they were cautioned but the learned Magistrate did not take any step against them for which they might be seriously prejudice.

17. Therefore, I do not find any reason to alter the finding made by the learned Magistrate.

18. However, taking into account the failing health of the defacto complainant the learned Magistrate is directed to hear out the application under Section 173(8) of the Cr.P.C filed by the complainant within one week from the date of communication of this order.

19. If on the facts and circumstances of the case and the materials on case diary it is found by the learned Magistrate that the statement of the complainant is required to be recorded under Section 164 of the Cr.P.C, he will take appropriate step so that his statement under Section 164 of the Cr.P.C can be recorded within one week from the date of communication of this order.

20. With the above direction the instant revision is disposed of.

(Bibek Chaudhuri, J.)