

**CIRCUIT BENCH OF CALCUTTA HIGH COURT
AT JALPAIGURI
CRIMINAL REVISIONAL JURISDICTION**

**Present :
The Hon'ble Justice Asha Arora**

C.R.R. 16 of 2019

Item No. 4

**Haradhan Das
Versus
The State of West Bengal and Another**

For the petitioner : Ms. Suman Sehanabis, advocate

For the State/O.P. No.1 : Mr. Sourav Ganguly, advocate

Heard on : 19/6/2019

Judgement on : 19/6/2019

Asha Arora, J.:

By the instant application under Section 401 read with Section 482 of the Code of Criminal Procedure, the petitioner has assailed the order dated 11th February, 2019 passed by the Additional Sessions Judge, Dinhata in Sessions Case No. 39 of 2017 whereby the proceeding/trial as regards one of the accused namely, Manoranjan Das has been “kept in abeyance” till his recovery while the trial in respect of co-accused Haradhan Das-petitioner herein has been ordered to be proceeded with.

The backdrop of the case in brief is that on 21st December, 2016, a written complaint was lodged by the opposite party no.2/defacto complainant alleging offences under Sections 302/ 201/ 34 I.P.C against two accused persons namely, Manoranjan Das and the petitioner herein, Haradhan Das, in respect of the unnatural death of his elder brother-in-law,

Swapan Das, whose dead body was recovered with marks of injuries. On the basis of the aforesaid written complaint, a proceeding being Dinhata P.S. Case No.1177 of 2016 was initiated which culminated in the submission of the charge sheet under Section 302/201 IPC against accused Manoranjan Das and under Section 201 IPC against the petitioner herein. It appears that after the commitment of the case, on the date of consideration of charge, an application under Section 329 CrPC was filed by the accused Monoranjan Das before the Additional Sessions Judge, Dinhata for postponing further proceedings of the case on the ground that the said accused was suffering from mental disorder. On the basis of such prayer which was supported by some medical papers, the trial court referred the aforesaid accused for medical examination by a psychiatrist and the Chief Medical Officer of Health, Coochbehar was directed to make necessary arrangement for the aforesaid purpose. In compliance with the order of the trial court, the accused Manoranjan Das was medically examined and a report was submitted by the CMOH, Coochbehar, stating that the aforesaid accused is presently not fit to stand trial with the observation that the mental status of the aforesaid accused should be reviewed after three months by a medical team to be constituted by the order of the trial court. Accordingly, the trial court by order dated 16th May, 2018 again directed the CMOH, Coochbehar to arrange for further medical examination of the accused Manoranjan Das and submit a report on or before 24th August, 2018. It further appears from the order dated 24th September, 2018 that a report was received from CMOH, Coochbehar stating that the aforesaid accused is still unfit to stand trial. The order dated 17th December, 2018 passed by the trial court reveals

that a medical board was constituted in compliance with the court's order for assessing the mental condition of the accused Manoranjan Das. Finally, by order dated 11th February, 2019, the trial court, on the basis of the report submitted by North Bengal Medical College and Hospital, Siliguri, found that the accused Manoranjan Das was presently unfit to stand trial and was advised institutional admission in a State Mental Hospital for "further evaluation and treatment". The aforesaid impugned order further reveals that from the medical report it appeared that this accused was suffering from "partial schizophrenia". On the basis of such medical report and an application filed on behalf of the accused Manoranjan Das, the trial court passed the impugned order, the relevant portion of which is quoted hereinbelow:

" As the accused Manoranjan Das has been suffering from "partial schizophrenia" and as per medical report as he is presently incapable to make his defence in this proceeding due to his unsoundness of mind/mental retardation, so the proceeding/trial against the said accused is hereby kept in abeyance till his recovery.

This case under section 302/201 of I.P.C. is pending since 2016 and its trial could not be initiated over such plea opted by the accused persons and the trial has been delayed for three years.

At this stage, in view of above facts and circumstances, I am of the view that trial of another accused cannot be stayed for an indefinite period. There is no impediment to proceed with the trial of the other accused as the case is pending for the last 3 years.

Let the case be proceeded with against accused Haradhan Das.

Ld. Advocate representing the accused Manoranjan Das as well as surety/sureties is directed to submit the periodical medical report of accused Manoranjan Das after collecting the same from Berhampore Mental Hospital, Murshidabad at

the interval of each and every two weeks till recovery of his mental ability.

The Superintendent of Berhampore Mental Hospital, Murshidabad is directed to send the medical report to this Court regarding treatment provided to the accused, and the development of mental state of the accused Manoranjan Das, after his periodical checkup, at the interval of each and every two weeks till recovery of his mental ability.

Let a copy of this order be handed over to the Id. Advocate representing accused Manoranjan Das as well as surety/sureties for information and compliance.

Let another copy of this order be sent to the Superintendent of Berhampore Mental Hospital, Murshidabad for information and compliance.

To 29-03-2019 for consideration of charge of accused Haradhan Das and awaiting for medical report of accused Manoranjan Das.”

Learned counsel for the petitioner submits that the allegation against this petitioner is under Section 201 I.P.C and not for the offence punishable under Section 302 I.P.C. It is canvassed that to establish a charge under Section 201 I.P.C prosecution must first prove that an offence under Section 302 IPC has been committed. Since the proceeding as regards the principal accused, Manoranjan Das has been stayed till his recovery, the trial court was not justified in proceeding with the case as against this petitioner who is charged only under Section 201 IPC. Learned counsel sought to impress that proof of the commission of an offence is essential for bringing home the charge under Section 201 IPC. To buttress her submission, reliance has been placed on the case of **Suleman Rahiman Mulani and another vs. State of Maharaashtra** reported in **AIR 1968 Supreme Court 829.**

Learned advocate for the State/opposite party no.1 submits that it is evident from the charge sheet and the case diary that a prima facie case for an offence under Section 302 IPC has been made out against the accused Manoranjan Das while this petitioner has been charge-sheeted only under Section 201 IPC. Referring to Section 201 IPC, learned advocate for the State contended that only on proof that an offence has been committed, Section 201 IPC comes into play, so both the accused should be tried together. Learned advocate for the State submits that no purpose will be served if the petitioner is tried separately under Section 201 IPC while the proceeding against the principal accused Manoranjan Das, charge-sheeted under Section 302 IPC is kept in abeyance.

I have considered the submissions with reference to the facts and circumstances of the case and the material on record. For the purpose of the present application it may be beneficial to quote the provisions of Section 201 IPC which is as follows:

“201. Causing disappearance of evidence of offence, or giving false information to screen offender.- Whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear, with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false;

If a capital offence.- shall, if the offence which he knows or believes to have been committed is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

If punishable with imprisonment for life.- and if the offence is punishable with (imprisonment for life), or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term

which may extend to three years, and shall also be liable to fine;

If punishable with less than ten years' imprisonment.- and if the offence is punishable with imprisonment for any term not extending to ten years, shall be punished with imprisonment of the description provided for the offence, for a term which may extend to one-fourth part of the longest term of the imprisonment provided for the offence, or with fine, or with both."

It is clear that for bringing home the charge under Section 201 IPC, proof of the commission of an offence is an essential requisite. It may be profitable to refer to paragraph 6 of the judgment in **Suleman Rahiman Mulani's** Case (supra) which is quoted hereinbelow:

"(6) The conviction of the appellant No.2 under S. 201 IPC depends on the sustainability of the conviction of appellant No.1 under S. 304-A IPC. If appellant No.1 was rightly convicted under that provision, the conviction of appellant No.2 under S. 201 IPC on the facts found cannot be challenged. But on the other hand, if the conviction of appellant No.1 under S. 304-A IPC cannot be sustained, then, the second appellant's conviction under S. 201 IPC will have to be set aside, because to establish the charge under S. 201, the prosecution must first prove that an offence had been committed not merely a suspicion that it might have been committed- and that the accused knowing or having reason to believe that such an offence had been committed, and with the intent to screen the offender from legal punishment had caused the evidence thereof to disappear. The proof of the commission of an offence is an essential requisite for bringing home the offence under S.201 IPC- see the decision of this Court in *Palvinder Kaur v. State of Punjab*, 1953 SCR 94= (AIR 1952 SC 354)."

It is evident that the trial court erred in directing the case to be proceeded with only against the petitioner Haradhan Das, while the proceeding has been stalled in respect of the principal accused Manoranjan Das till his recovery. For the reasons aforestated, it would be appropriate

that both the accused should be tried together after the recovery of accused Manoranjan Das. Therefore the impugned order is modified to the extent that the petitioner Haradhan Das shall be tried along with the principal accused Monoranjan Das.

It is made clear that the petitioner/accused Haradhan Das shall appear on each and every date posted before the trial court, in default of which the trial court shall be at liberty to take appropriate steps in accordance with law against the petitioner without any reference to this Court.

The application being CRR 16 of 2019 is thus disposed of.

Urgent Photostat certified copy of this order, if applied for, be given to the applicant upon compliance of requisite formalities.

(Asha Arora, J.)