

09.09.2021

Item No.85
Ct.No.34
dc.

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION**

C.R.R. 458 of 2016
(Via Video Conference)

Jyotirmoy Ghosh
versus
The State of West Bengal & Anr.

In Re: An Application under Section 482 of the Code of Criminal Procedure, 1973.

Mr. Sekhar Basu, Sr. Adv.,
Mr. Anirban Tarafder ... For the Petitioner.

Mr. Imran Ali,
Ms. Debjani Sahu ... For the State.

In spite of service, none appears on behalf of the complainant.

The present revisional application was preferred challenging the Complaint Case No. 119 of 2011 (T.R. No. 95 of 2011) pending before the learned Judicial Magistrate, 1st Court, Sealdah under Sections 109/200/350/406/464 of the Indian Penal Code as also the orders passed therein.

The grievance of the complainant, as reflected from the petition of complaint, is that his wife viz. Banani Saha was a consumer of C.E.S.C Limited and is also a commercial meter holder which was installed by the CESC. According to him, the accused no.1 viz. Prabir Kumar Kundu illegally and by counterfeiting the signature of the complainant's wife, influenced the authority of North Regional office of CESC and converted the name of the owner of the meter to his own

name. As the accused no.2 is responsible authority to perform the connection in respect of new electric meter, the complainant alleges that the said accused no.2 was in conspiracy with the accused no.1. He further alleges that on the basis of forged and manufactured documents, there has been change of name so far as the electric meter being No. 2207744 is concerned and both the accused persons are in conspiracy with each other. It has further been alleged that the accused no.2 has refused to refund the security deposit of the complainant and misappropriated the deposited security money.

The cause title in the complaint refers to the present petitioner as the District Engineer, North Regional Office, 226A & B, Acharya Prafulla Ch. Rd., Kolkata-700004.

Learned Additional Chief Judicial Magistrate, Sealdah on perusal of the petition of complaint vide order dated 03.03.2011 was pleased to take cognizance of the offence under Sections 419/406/350/464 of the Indian Penal Code and transferred the same to the file of the learned Judicial Magistrate, 1st Court, Sealdah for disposal in accordance with law.

By an order dated 29.04.2011, the learned Judicial Magistrate, 1st Court, Sealdah, on examination of the complaint under Section 200 of the Code of Criminal Procedure, was pleased to issue process under Section 204 of the Code of Criminal Procedure.

On perusal of the order-sheets, it reflect that till 25.06.2015, the accused no.2 was not specifically spelt out in personal name, but only the designation of the office was referred to there. However, from the order dated 25.06.2015, the learned Magistrate was pleased to issue summons upon one Saibal Mitra as accused no.2. Subsequently by an order dated 29.08.2015 summons was issued upon the present petitioner and the ordersheet reflects that 'as details furnished by the complainant'. By an order dated 18.12.2015, the present petitioner entered appearance through his learned lawyer before the learned Magistrate.

Mr. Basu, learned senior advocate appearing for the petitioner contends that the manner in which the process has been issued by the learned Magistrate by scratching out the name of the previous person who was implicated as accused no.2 is in gross violation of the settled principle of law as there was no evidence before the learned Magistrate except the allegation in the petition of complaint and the examination under Section 200 of the Code of Criminal Procedure. So far as the designation of the officer is concerned, it was incumbent upon the learned Magistrate whether at the relevant point of time, during which the complaint was made, the petitioner was anyway or other in charge of the office which has been designated as accused no.2 in the complaint. The learned Magistrate having not assessed the same and on a written petition, filed by the

complainant, issued process, the same violates the basic tenets of law for implicating a person as an accused in a criminal case. To that effect, the learned senior advocate relies upon a judgment in ***Pepsi Foods Ltd. & Anr. Vs. Special Judicial Magistrate & Ors.*** reported in ***(1998) 5 SCC 749***.

It has further been contended that the CESC authorities acted pursuant to the order passed by learned Executive Magistrate, Sealdah in M.P. Case No. 3026 of 2010 wherein a specific direction was passed upon the Officer-in-Charge of Chitpur Police Station to see that there should be no disturbance or disruption to supply electricity to the room of the accused no.1. Further there was a notarized affidavit which was filed by the accused no.1 declaring himself as tenant which is available in the CESC records.

The issuance of process by the learned Magistrate inherently suffers from illegality as it was incumbent upon the learned Magistrate first to ascertain whether the petitioner at the relevant point of time, when the alleged offence was committed, was the District Engineer. Secondly it was also incumbent upon the learned Magistrate before issuance of process to assess whether the office exercising such power of supply of electricity and the officer concerned was in an error of judgment or was having requisite *mens rea* for entering into a conspiracy with the tenant. From the allegations made in the petition of complaint, the examination of the complainant and his witness under Section 200 of the

Code of Criminal Procedure and particularly, the order by which process was issued against the present petitioner, I am of the view that there has been total non-application of mind of the learned Judicial Magistrate implicating the present petitioner without proper information being furnished for implicating a responsible officer to face the consequence of criminal trial. The manner in which the petitioner has been roped in the present criminal case, is in gross abuse of process of the court and further continuance of the same should not be allowed to continue. Accordingly, all further proceedings, so far as the present petitioner is concerned, arising out of Complaint Case No. 119 of 2011 pending before the learned Judicial Magistrate, 1st Court, Sealdah are hereby quashed.

The revisional application being CRR 458 of 2016 is, thus, allowed.

Interim order, if any, is hereby made absolute.

All pending connected applications, if any, are consequently disposed of.

All parties shall act on the server copy of this order duly downloaded from the official *website* of this Court.

(Tirthankar Ghosh, J.)