

Form No. J(2)

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

Present:

The Hon'ble Justice Suvra Ghosh

C.R.R. 1806 of 2017

**Madhumita Das
Vs.
State of West Bengal**

For the petitioner : Mr. Sekhar Basu, Sr. Adv.
Mr. Kushal Mukherjee
Ms. Arushi Rathore

For the State : Mr. Prasun Kumar Dutta, learned APP
Mr. Santanu Deb Roy
Mr. Pratick Bose

Heard on: 11.02.2021

Judgment on: 11.02.2021

Suvra Ghosh, J.:

The petitioner assails orders dated 21.03.2017 and 24.04.2017
passed by the learned Municipal Magistrate, 3rd Court, Kolkata, in Case

No. M.F. 400 of 2014 under Section 401A of the Kolkata Municipal Corporation Act, 1980.

Learned senior Counsel appearing for the petitioner has referred to the orders impugned and has submitted that certain caustic and derogatory remarks were made by the learned trial court against the petitioner in the said orders without affording an opportunity to the petitioner of explaining her stand. Learned senior Counsel reminds the Court of the maxim that “nobody should be condemned unheard”. According to the learned senior Counsel the learned trial court held the petitioner to be responsible for alleged tampering of the charge-sheet pertaining to the case pending before the learned trial court and also held at the instance of the petitioner constable Mr. Sahadat Hossain embarked upon such illegal and unethical act.

It transpires from the orders impugned that charge-sheet under Section 401A of the Kolkata Municipal Corporation Act was submitted before the Court on 17.11.2015 against two accused persons Mr. Abhyuday Dugar and Aristae Cosmetic Private Limited. After cognizance being taken notice was issued upon accused no. 2 but service could not be effected as the said accused was not found at the address stated in the charge-sheet. Upon calling for a report from the Investigating Officer it

was learnt that the Investigating Officer submitted charge-sheet against only one accused person Mr. Abhyuday Dugar and one Sahadat Hossain, Court constable of Phoolbagan Police Station inserted the name of the second accused in the charge-sheet which was evident from the overwriting found in the charge-sheet itself. On an explanation being sought from Mr. Hossain, he submitted in writing that he was instructed by 'P.P. Madam' to insert the name of the second accused in the charge-sheet. The trial court took serious note of the fact and directed the Commissioner of Police, Kolkata, to initiate proceeding against Mr. Hossain. Learned trial court further directed the Commissioner of Kolkata Municipal Corporation to trace the 'P.P. Madam' referred to by the constable and start appropriate proceeding against her. In compliance with the direction of the learned trial court proceeding has been initiated against the petitioner who appears to have been the Public Prosecutor of the case at the relevant time.

By virtue of order of this Court dated 01.06.2017 both the orders impugned were stayed.

It is evident from the order impugned dated 21.03.2017 that no opportunity was accorded to the petitioner to explain the allegation levelled against her before initiation of proceeding was directed. It is trite

law that a person accused of an offence, howsoever serious it may be, ought to be heard before she is condemned. Learned trial court, in the order impugned, has hastily proceeded to establish the guilt of the petitioner and has recorded serious comments against her without affording her an opportunity to explain the situation. The proceeding against her was also initiated in compliance with the direction of the learned trial court and was not based on any independent finding by the Kolkata Municipal Corporation.

In my considered view, the petitioner should have been granted an opportunity of being heard before such serious allegation was thrust upon her. The portion of the order impugned attributing certain allegations against the petitioner and also directing the Commissioner of Kolkata Municipal Corporation to start appropriate proceeding against her is required to be set aside and the petitioner deserves an opportunity to explain the allegations made out against her before she is visited with any consequence.

Accordingly, the portions of the order impugned dated 21.03.2017 enumerated below are set aside :

“As role of ‘PP Madam’, at whose beck and call, Mr. Hossain embarked on an unlawful journey to tamper with the charge sheet, is highly unethical, objectionable and condemnable, her name is required to be known by ripping off her mask to keep her

and other like mined persons out of the precincts of Court and its proceedings”

and

“Commissioner of Kolkata Municipal Corporation is directed to find out and inform as to who was ‘PP Madam’ attached to the Municipal Courts in or around 21-01-2016 and start appropriate proceeding against such ‘PP Madam’ and inform as to what action has been taken against her by the Corporation by the next date to be fixed.

The concerned mandarin is also directed to ensure that such ‘PP Madam’ is not employed or deputed ever in any Court of law in connection with any proceeding before it”.

However, learned trial court shall be at liberty to take necessary steps against the petitioner after affording her an opportunity of being heard, in accordance with law.

The proceeding pending against the petitioner before the Kolkata Municipal Corporation shall abide by the order of the learned trial court.

With these observations and directions, the revisional application being CRR 1806 of 2017 is disposed of.

There will be no order as to costs.

Urgent certified website copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Suvra Ghosh, J.)

