

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION

Present:

THE HON'BLE JUSTICE JAY SENGUPTA

C.R.R. 2580 Of 2018

Siraj Haque @ Nilu

Versus

The State of West Bengal & Ors.

Petitioner in person : Mr. Siraj Haque @ Nilu

For the Opposite Party No. 2 : Mr. Surajit Basu

For the State : Mr. Imran Ali

Mr. M.F.A. Begg

Heard on : 18.02.2021

Judgment on : 01.03.2021

JAY SENGUPTA, J:

1. This is an application for transfer of a proceeding in a complaint case being C.R. No. 1113 of 2017/ T.R. No. 1057 of 2017 presently pending before the Learned Judicial Magistrate, 2nd Court, Rampurhat, Birbhum in which process was issued for offences under Sections 500, 504 and 506 of the Penal Code and Section 66A of the Information Technology Act.

2. The petitioner appearing in person submitted as follows. The petitioner was a businessman stationed at Chennai. The

complainant/opposite party happened to be the brother-in-law of the petitioner. The petitioner purportedly inherited a property at Rampurhat. For the last few years, the complainant had been trying to grab the entire property by any means. He had been trying to harass the petitioner by initiating different proceedings taking advantage of his profession as a lawyer. So far as the impugned proceeding was concerned, no prima facie case was made out against him. The petitioner was not even present at the place of occurrence at the alleged date and time. Pursuant to summons issued in this regard, the petitioner appeared in person before the learned Trial Court on 06.03.2018. The learned Trial Court, after verifying the documents produced by the petitioner as regards his identity, fixed 21.07.2018 as a next date. Whether the order sheet was tampered or not, subsequently it was found to have been recorded in the order sheet that the petitioner claimed to appear in person, did not produce any vakalatnama and could not satisfy the Court regarding his identity. Accordingly, a warrant of arrest was issued against the accused petitioner. Although the facts were not properly pleaded in the main revisional application filed by a learned lawyer, subsequently the correct facts were placed on record by the petitioner by way of a supplementary affidavit. The complainant/opposite party was an Advocate practising at the Rampurhat Court and was in the panel of assistant public prosecutors conducting cases for the State of West Bengal. He was an influential person of the locality. That was why the petitioner could not find any Advocate to represent him there. He had to come all the way from Chennai to defend the case himself. The petitioner had lodged a complaint against the complainant/opposite party at the Bar

Council in 2019. Since several threats were given to the petitioner by the complainant's associates, he had intimated these to the police on several occasions by post. The petitioner feared that if he went to Rampurhat, he could be subjected to criminal acts. Although the petition of complaint did not have Section 66A of the Information Technology Act as a charge, yet the learned Magistrate issued process also under that provision. Not only the petitioner was a mortally afraid of going to Rampurhat to defend the case, he also believed that he would not be getting justice before the learned Trial Court where the case was pending.

3. Learned Counsel appearing on behalf of the complainant/opposite party submitted as follows. The claims of the petitioner about threats meted out to him at the behest of the complainant or about the non availability of Advocates at Rampurhat to defend his case were not supported by documents. The complaint before the Bar Council was not about not getting any Advocate at Rampurhat to defend his case. It only contained allegations against the complainant because he was a lawyer enrolled with the Bar Council. Even no G.D. Entry or First Information Report was lodged by the petitioner about the alleged threats given at the behest of the complainant. In the main application affirmed by the petitioner himself, there was no allegation of tampering the order sheet. However, the supplementary affidavit filed subsequently contained an improved version. Had there been a tampering of the Court's records, the same should have been brought to the notice of the learned Court at the earliest. A prima facie case was made out against the petitioner as would be evident from a plain reading of the

petition of complaint. The present application was filed only to delay the proceeding initiated against the petitioner.

4. I heard the petitioner appearing in person and the learned counsel for the opposite party No. 2 and perused the revision petition and the affidavits filed in this case.

5. First, so far as the allegation of tampering of the order sheet is concerned, the petitioner ought to have brought this to the notice of the learned Court at the earliest. But, the same was not done. Therefore, one need not delve further into this issue.

6. However, the correctness of the order passed on a particular day can always be questioned. For one, recording an order that the petitioner claiming to appear in person appeared without a vakalatnama belies any logic. A vakalatnama is a contract between a litigant and his lawyer. Therefore, if a litigant chooses to appear in person, then where is the question of there being a vakalatname? That apart, if the learned Trial Court was not satisfied with the documents regarding the identity of the accused, the matter could have been adjourned and the accused could have been directed to produce proper documents. Instead, a warrant of arrest was issued. Therefore, the order issuing warrant of arrest suffers from illegality and needs to be interfered with.

7. Although it may be a question of temporary lack of application of mind on the part of the learned Trial Court, especially regarding questioning the absence of vakalatnama, it may nonetheless cast a serious doubt in the mind of the petitioner that he might not get justice before the particular

Court. This is more so in the context that the complainant was a practising Advocate of that Court who was also in the panel of assistant public prosecutors. Often perceptions are more important than reality. Actual existence of a bias is not always necessary. It is more relevant that a litigant entertains a reasonable apprehension that he will not get a fair trial. After all, justice should not only be done, but also seem to be done. On this, reliance may be placed on the decisions of the Apex Court in *Satish Jaggi vs. State of Jharkhand & Ors.*, (2007) 3 SCC 62 and *Abdul Nazar Madani vs. State of Tamil Nadu*, (2000) 6 SCC 204.

8. Therefore, without casting any aspersion on the learned Trial Court at all, it would be expedient to have the proceeding transferred to another Court.

9. Now, coming to the question of not finding Advocates at Rampurhat, it appears that no such complaint was made to any such authority. No letter was written to the office bearers of the local Bar Association/s in respect of non availability of Advocates to defend the petitioner. In fact, the petitioner also conducted his case before this Court on his own without taking the aid of any advocate. The reason why the petitioner conducted his case at a particular forum is possibly because of the greater faith he had on himself than on anyone else. Be that as it may, no case is made out that the petitioner was unable to get lawyers at Rampurhat to defend himself.

10. Besides, merely because an individual practises law at a particular forum, it does not mean that any litigation pertaining to him cannot be continued at that forum.

11. Moreover, ritualistic complaints made to the police about threats given, that too sent by post and without taking any further action on it, cannot be deemed sufficient for effecting transfer of a case to another Court in a different district.

12. However, in the event any threat or intimidation is given to the petitioner while conducting his case at a venue, then he shall be at liberty to bring it to the notice of the concerned learned Court for grant of adequate protection. But, it does not appear that such a stage has come.

13. In view of the above and in the interest of justice, the warrant of arrest issued against the petitioner is set aside. The case is transferred to the file of the Additional Chief Judicial Magistrate, Rampurhat, Birbhum for disposal. The learned Court is requested to make all endeavours to dispose of the case and connected application/s, if any, as expeditiously as possible. The learned Court shall be at liberty to grant adequate protection to any of the parties while attending the Court if there are adequate reasons to warrant the same.

14. With these observation, the revisional application is disposed of.

15. Urgent photostat certified copies of this judgment may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

(Jay Sengupta, J)