

08.04.2021
Ct. No. 35
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C.R.R. No. 3857 of 2015
With
CRAN 1 of 2016 (Old No. CRAN 796 of 2016)

In the matter of : Sudip Debpetitioner

Mr. Sekhar Basu. Sr. Adv.
Mr. Milan Mukherjee, Sr. Adv.
Mr. Sandipan Ganguly, Sr. Adv.
Mr. Indranil Roy
Mr. Dipanjan Dutt
..... for the petitioner

Mr. S. G. Mukherjee, learned P.P.
Mr. Swapan Banerjee
Mr. Suman De
..... for the State

Let affidavit-of-service filed by the learned Counsel appearing for the petitioner be kept with record.

The petitioner and the State are represented.

Opposite party no. 2 does not appear despite service of notice.

The Court is convinced that opposite party no. 2 is not interested in contesting the matter.

In the present application under Section 482 of the Code of Criminal Procedure the petitioner has prayed for quashing of proceedings being G.R. Case No. 67 of 2007 arising out of Burtalla Police Station Case No. 8 of 2007 dated 15.01.2007

under Sections 304A/337/338/427/34 of the Indian Penal Code pending before the Court of the learned Additional Chief Metropolitan Magistrate at Calcutta.

The contention of the petitioner is that the case was registered on the basis of complaint lodged by opposite party no. 2 to the effect that on 13.01.2007 when opposite party no. 2 had gone to Chhatubabu Market at Chirapatty to purchase grocery items along with her son and daughter at about 17.25 hours, a portion of the roof of the market collapsed, causing injuries to them and several others. Her daughter Shibani Show sustained severe injuries on her head and succumbed to such injuries on the same date. According to the complainant/opposite party no. 2 the market was owned by Anath Nath Deb Trust Estate and the roof collapsed due to lack of proper maintenance and repairs by the owners of the trust.

Investigation was initiated and after conclusion of investigation charge-sheet was submitted against the petitioner and four others under Sections 304A/337/338/427/34 of the Indian Penal Code.

Learned senior Counsel appearing for the petitioner has submitted that the petitioner is neither a member of the trust nor was under any obligation to maintain or look after the market in question. There is no evidence to suggest that the petitioner was, in any manner, responsible for the occurrence and there is no material against him which warrants submission of charge-sheet under Sections 304A/337/338/427/34 of the Indian Penal Code.

Learned Counsel appearing for the State refers to the case diary including the statements of the witnesses recorded under Section 161 of the Code of Criminal Procedure in the course of investigation.

Undoubtedly the untimely death of a young girl, as transpires from the record, is extremely unfortunate. At the same time, it is to be considered as to whether sufficient materials have transpired against the petitioner prima facie suggesting his involvement in the occurrence of the alleged incident.

It transpires from the case diary that none of the witnesses referred to the petitioner as one of the members of the trust or a person who was involved with the trust or responsible for the maintenance and upkeepment of the market on behalf of the trust. In fact, there is no prima facie material against the petitioner which suggests his obligation to maintain the property or his responsibility in occurrence of the alleged incident. A plain reading of the complaint itself suggests that no case under Sections 304A/337/338/427/34 of the Indian Penal Code has been made out against the petitioner. The complaint specifically states that the incident occurred due to negligence on the part of the owners of the Trust in maintaining the market. The petitioner is not named as one of the owners, nor has any liability been attributed to him with regard to the incident.

It is trite law that jurisdiction under Section 482 of the Code of Criminal Procedure should be exercised with care, caution and circumspection and should not be used to axe down

a legitimate prosecution. The test is whether the uncontroverted version of the complaint makes out a prima facie case against the petitioner and whether allowing the proceedings to continue shall amount to abuse of the process of the Court.

In the case in hand, the materials on record including the version of the complaint itself do not suggest a prima facie case having been made out against the petitioner. As such, allowing the proceedings to continue against him shall only amount to abuse of the process of the Court.

In the premise, proceedings being G.R. Case No. 67 of 2007 arising out of Burtalla Police Station Case No. 8 of 2007 dated 15.01.2007 under Sections 304A/337/338/427/34 of the Indian Penal Code pending before the Court of the learned Additional Chief Metropolitan Magistrate at Calcutta qua the petitioner is liable to be quashed.

Accordingly, the revisional application being CRR No. 3857 of 2015 is allowed. In view of disposal of the revisional application connected application being CRAN 1 of 2016 (Old No. CRAN 796 of 2016) is also disposed of.

However, there shall be no order as to costs.

Proceedings being G.R. Case No. 67 of 2007 arising out of Burtalla Police Station Case No. 8 of 2007 dated 15.01.2007 under Sections 304A/337/338/427/34 of the Indian Penal Code pending before the Court of the learned Additional Chief Metropolitan Magistrate at Calcutta qua the petitioner is quashed.

The petitioner be set at liberty at once and be discharged from his bail bond. However, proceedings with regard to other accused persons shall continue.

Case diary be returned.

Copy of this order be sent to the learned Trial Court forthwith for necessary compliance.

Urgent certified website copy of this order, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

(Suvra Ghosh, J.)