

17.06.2021

Item No.21
Ct.No.34
dc.

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

C.R.R. 4438 of 2007
(Via Video Conference)

Salil Bhattacharjee
versus
The State of West Bengal & Anr.

In Re: An Application filed under Section 401 read with Section 482 of the Code of Criminal Procedure, 1973.

Mr. Abhra Mukherjee ... For the Petitioner.

Mr. Bidyut Kumar Roy,
Mr. Asok Das ... For the State.

Mr. Mukherjee, learned advocate appears for the petitioner.

As none appears for the State, Mr. Bidyut Kumar Roy, learned advocate and Mr. Asok Das, learned advocate are directed to appear and represent the State. Their appointment may be regularised by the learned Public Prosecutor.

The present revisional application has been preferred for quashing the proceedings of Case No. A.C. 600 of 2007 pending before the learned Additional Chief Judicial Magistrate, Alipore, South 24-Parganas under Sections 323/34 of the Indian Penal Code.

The allegations made in the petition of complaint were to the effect that on 21.10.2007 at about 2 p.m. when the complainant had been to the police station for the purpose of lodging G.D./FIR, the duty officer i.e. the accused no.3 refused to take the G.D./FIR of the complainant and all the

accused persons abused the complainant with filthy languages and assaulted him by fists and blows as also with sticks. The complainant suffered injuries and was treated. The complainant alleges that the accused persons committed offences under Sections 323/324/427//392/506/504/34 of the Indian Penal Code.

By an order dated 16.11.2007, the learned A.C.J.M., Alipore after taking cognizance of the offence and after examining the complainant and his witnesses under Section 200 of the Code of Criminal Procedure was *prima facie* of the opinion that a case under Sections 323/34 of the Indian Penal Code has been made out and as such, issued process against all the accused persons who were named in the complaint.

A bare perusal of the complaint reflects that there was no overt act attributed to the present petitioner, who at the relevant point of time, was the Inspector-in-Charge of Thakurpukur Police Station neither any details were narrated in the petition of complaint. The cause title of the complaint referred the petitioner as accused no.8 and it was stated that he was working for gain at Thakurpukur Police Station.

The facts of the case reflect that even if the allegations made in the petition of complaint are accepted to be true, the same were committed within the premises of Thakurpukur Police Station. As such, to issue process against the present petitioner, I am of the view that it was incumbent upon the learned A.C.J.M., Alipore first to consider whether the

provisions of Section 197 of the Code of Criminal Procedure were required to be adhered or not. The complainant purposely suppressed the designation not only of the present petitioner but also of other persons who were implicated in the case who were officials of the concerned police station.

Needless to state that the provisions of Section 197 of the Code of Criminal Procedure were incorporated in the Code of Criminal Procedure to scrutinise, assess and protect the government servants while they are exercising their official duty.

Having regard to the aforesaid, I am of the view that the order dated 16.11.2007 passed by the learned A.C.J.M., Alipore is devoid of any consideration regarding the provisions of Section 197 of the Code of Criminal Procedure and as such, the same is set aside. The revisional application is partly allowed.

The learned Additional Chief Judicial Magistrate, Alipore is directed to assess the provisions of Section 197 of the Code of Criminal Procedure in true and proper perspective before further proceeding into the case.

With the aforesaid observations, CRR 4438 of 2007 and all connected applications are 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.)