

15.03. 2022
item No.88
n.b.
ct. no. 34

CRR 136 of 2019
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IA No. CRAN 4 of 2020 (Old No. CRAN 647 of 2020)

Raj Singh Chopra & Ors.
Vs.
State of West Bengal & Anr.

Mr. Sabyasachi Benerjee,
Mr. Ayan Bhattacharjee,
Mr. Rajib Mallick,
Mr. Rakesh Sarkar
.....for the Petitioners

Mr. Madhusudan Sur, A.P.P.,
Mr. Manoranjan Mahata
.....for the State

Mr. Sanjay Banerjee,
Mr. Anirban Pramanick
.....for the Opposite Party

The revisional application has been preferred challenging the continuation of the proceedings relating to Case No. CS/44191 of 2018 pending before the learned Metropolitan Magistrate, 11th Court at Calcutta.

The background of the case is that pursuant to an investigation being conducted and the closure report under Section 173 of Cr. P.C. filed at the instance of the Investigating Agency, a petition under Section 173(8) of the Code of Criminal Procedure was filed at the instance of the de facto complainant being the opposite party no.2 herein.

Mr. Bhattacharjee, learned advocate appearing for the petitioners draws the attention of this Court to the relevant part of the report under Section 173 of the Code of the Code of Criminal

Procedure and submits that after exhaustive investigation which includes amongst others the cross checking of the signature as to the person who received the notice, by experts of the C.I.D., recording of the statement under Section 164 of the Code of Criminal Procedure and after thorough materials being collected the opinion was arrived at wherein the Investigating Officer concluded that the allegations made by the complainant were not substantiated. The Investigating Officer in the same breath also observed that during investigating various litigations were pending between the parties in different forum including National Company Law Tribunal and other forums. According to the investigation officer the dispute is civil in nature and as such, the investigation of the case should be closed.

Mr. Bhattacharjee, learned advocate appearing for the petitioner contends that the application under Section 173(8) of the Code of Criminal Procedure which was filed before the Learned Magistrate was bereft of any details and it is a subsequent plea of the complainant before this Court that the said Arjun Singh who has been referred to in the charge-sheet as a witness receiving the notice on behalf of the complainant has left the service at the relevant point of time when he received the notice.

It is further opposed that the subsequent contention before this court by Mr. Sanjoy Banerjee, learned advocate for the opposite party that Arjun Singh was in conspiracy with the present petitioners is against the facts both in the F.I.R. and totally missing in the application under Section 173(8) of the Code of Criminal Procedure.

Mr. Sanjoy Banerjee, learned advocate submits that the complainant was illegally removed from the Directorship for which he has remedy both before the NCLT, civil forum as well as criminal case is maintainable. The closure of the investigation do not debar him from filing the petition of complaint and the order passed by the Learned Magistrate should not be interfered with.

Mr. Banerjee, learned advocate appearing for the petitioners relies upon a decision of ***B. Chandrika Vs. Santosh & Anr.*** reported in ***2014(13) SCC 699*** and refers to paragraphs 5 therein.

Mr. Banerjee, learned advocate contends that cognizance was taken by the order dated 30.4.2018 is bad in law in view of the fact that the protest petition did not satisfy the ingredients of the complaint.

I have considered the submission advanced by the petitioner as well as the complainant and considered the materials on record which are available in the Case Diary, it is evident from the nature of the application which was filed by way of protest petition before the learned Magistrate that after the closure report was submitted by the Investigating Officer the same was with the spirit of a prayer for an investigation to be conducted by the Police Authorities. The ingredients of the relevant sections of Indian Penal Code may have been missing in the application under Section 173(8) of the Code of Criminal Procedure because the records already contained the Section 156(3) Cr. P.C. application which spelt out the alleged offences under the relevant provisions of law. The learned Magistrate did not restrict himself also to the

application under Section 173(8) of the Code of Criminal Procedure but also took into account the materials which was existing in the Case Diary. As such, there is no issue of the learned Magistrate not having applied his mind while taking cognizance of the offences complained of.

In view of the background of the case where the Police Authorities have arrived at the conclusion that the notice was received by Arjun Singh who was an employee of the complainant and the subsequent pleas which has been taken by the complainant before this Court that the said Arjun Singh had left service of the complainant prior to date on which it has been contended that notice was received by him, I am of the opinion, that an inquiry is required to be conducted prior to issuance of process.

Accordingly, the order dated 05.11.2018 passed by the learned Metropolitan Magistrate, 11th Court at Calcutta is set aside. The Learned Magistrate is directed to conduct an enquiry himself or through any of the persons referred under Section 202 of the Code of Criminal Procedure to ascertain the factual circumstances referred to in the Case Diary and thereafter come to a conclusion whether a case for issuance of process has been made out.

With the aforesaid observations, CRR 136 of 2019 is disposed of.

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

Interim order, if any, is hereby vacated.

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

(Tirthankar Ghosh, J.)