

07-04-2022
Subha
Item no.69
Ct no.34

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction

C.R.R 285 of 2020

In the matter of : **State of West Bengal represented by Public
Prosecutor, High Court, Calcutta & Ors.**petitioners.

In Re : An application under Section 401 read with Section 482 of
the Code of Criminal Procedure.

Mr. Sudip Ghosh
Mr. Apurba Kumar Datta
....for the petitioners.

Mr. Abhra Mukherjee
Mr. Sauradeep Dutta
....for the Opposite Party.

Mr. Ghosh, learned advocate appearing on behalf of the petitioners submits that the order dated 11th December, 2019 passed by the learned Additional District and Sessions Judge, Fast Track Court No.2, Purulia thereby directing that the application under Section 156(3) of the Code of Criminal Procedure to be sent to the Officer-in-Charge, Purulia Town P. S. to cause investigation into the matter after considering the same as the F.I.R and submit a report about the steps taken suffers from inherent illegality.

To that effect, learned advocate submits that the allegations are counter-blast to a criminal case being registered against the complainant and/or its entities and the same is directed against the police officers who were thickly involved in connection with the investigation of the said case and subsequently facts have been

narrated in such a manner that it suits the purposes of certain sections which were initially not accepted by the learned Magistrate and the learned Sessions Court on too technical grounds allowed the revisional application thereby giving effect to registration of criminal case against the public servants.

Mr. Abhra Mukherjee, learned advocate appearing on behalf of the opposite party, who happens to be the complainant as well as the petitioner in the revisional application before the learned sessions court, submits that the present revisional application has been filed in gross ignorance of the settled principles of the criminal rules and orders of the High Court at Calcutta. Learned Advocate submits that it is surprising that how the State is representing the accused persons. Several changes have been made in the revisional application which do not conform to the regular standards and by incorporating or inserting subsequent changes, the reference to the parties in the contents of the revisional application itself has been changed. In fact, learned advocate drew the attention of this court to the affidavit of the revisional application which reflects that the references to the petitioners in the revisional have been changed.

Much stress has been laid by the learned advocate appearing for the petitioners in respect of the State of West Bengal taking the responsibility on its shoulders regarding delinquent police officers, their acts, conduct, high-handedness and the protection given to them by the State.

Learned advocate also drew the attention of this court to the contents of the application under Section 156(3) of the Code of

Criminal Procedure and submitted that each of the allegations for which the prayer was advanced for registration of the FIR and investigation are substantiated to the extent and allegation is required to be made in an application under Section 156(3) of the Code of Criminal Procedure which necessarily being not the encyclopedia of facts.

I have considered the submissions advanced by the rival parties. I have also taken into account particularly the manner in which the revisional application was filed before this court and I find that numerous corrections have been made, although with the permissions of the authorities concerned, but the cause title and the affidavit do not co-relate to each other. This obviously cannot be attributed to the petitioners, but to the lawyers who had prepared the draft and filed the application. It would be too technical to brush aside the merits of the revisional application and restrict the views of this court only to the manner of filing of the present revisional application is concerned, although the same reflects a negligence and causal approach of the filing advocates.

So far as the order of the learned sessions court is concerned, which is the subject matter of challenge in this revisional application, I find that the learned sessions court restricted itself to some of the observations of the Hon'ble Supreme Court in the case of *Lalita Kumari -vs- State of Uttar Pradesh & Ors.*, reported in (2008) 7 SCC 164.

The primary duty of the court was to assess the spirit and tenor of the allegations in respect of the application under Section

156(3) of the Code of Criminal Procedure and in respect of whom they were filed. It was also the duty of the court to assess regarding all the other statutory provisions which are applicable to be considered in respect of public servants and whether the act complained of was in discharge of their official duties or not, irrespective of the fact that the allegations may be of such nature which the circumstances may warrant or may not warrant.

No speaking order has been passed in this case by the learned sessions court while assigning its reasons for registration of the criminal case against the Inspector-in-Charge as also the Investigating Officer relating to a case wherein the opposite party was already an accused.

I have considered the nature of the allegations made in the application under Section 156(3) of the Code of Criminal Procedure with respect to paragraphs 1, 7, 8, 10, 12 and other relevant parts therein. The nature of the allegations made therein, prima facie, satisfies the conscience of the court that the police officers who were involved in the process of investigation are required to be protected to the limited extent of Section 197 of the Code of Criminal Procedure.

Accordingly, I direct that no case can be registered on the basis of the order passed by the learned Sessions Judge in Criminal Revision No. 9 of 2019 without a sanction being accorded by the appropriate authority. The opposite party would be at liberty to pray for sanction before the appropriate authority and once such sanction, if any, is granted there is no bar for registration of criminal case in consequences to the order of the learned sessions court.

If such an application is made by the opposite party before the appropriate authority, the same should be disposed of within a period of three months from the date of the application after considering the relevant documents associated with the case.

With the aforesaid observations, the present revisional application being CRR 285 of 2020 is disposed of.

It has been submitted by Mr. Mukherjee, learned advocate appearing on behalf of the opposite party that the lower court records referred to in the order of the learned Sessions Judge are yet not available before the learned Chief Judicial Magistrate, Purulia.

Department is directed to communicate with the learned District Judge, Purulia who would take efforts for sending the lower court records to the learned C. J. M, Purulia if the same has not already been sent.

Interim order, if any, is hereby vacated.

All pending applications, if any, in connection with the revisional application, are consequently disposed of.

All concerned parties are to act in terms of a copy of this order duly downloaded from the official website of this court.

[Tirthankar Ghosh, J]

