

06-06-2022
Subha
Item no.50
Ct no.34

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction

CRR 231 of 2021

In the matter of : **Kedar Sardar @ Monorajan & Ors.**petitioners.

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

Mr. Kallol Kumar Basu
Md. Jannat Ul Firdous
Ms. Tithi Majumdar

.....for the petitioners.

Mr. Ranabir Roy Chowdhury
Mr. Mainak Gupta

....for the State.

Supplement affidavit so filed be kept with the record.

Mr. Basu, learned advocate appearing on behalf of the petitioners has challenged the order dated 14.01.2021 passed by the learned Fast Track Court No.1, Basirhat, North 24 Parganas wherein the learned court was pleased to reject the prayer of the petitioners and fixed date for consideration of charge.

Mr. Basu, learned advocate submits that Sandeshkhali P. S. Case No. 211 of 2019 dated 02.11.2019 and Sandeshkhali P. S. Case No. 212 of 2019 dated 02.11.2019 arose out of the same transaction and as such must be jointly tried. To that effect, the petitioners approached the learned trial court with an application under Section 220 of the Code of Criminal Procedure. However, the learned trial court on an appreciation of the same was pleased to reject it.

Mr. Basu, learned advocate in support of his contention relied

upon a judgement of the Supreme Court in the case of *Mohan Baitha and Others –vs- State of Bihar and Anr.* reported in (2001) 4 *Supreme Court Cases* 350. Drawing the attention of this court to paragraph 4 of the said Judgement, learned advocate has submitted that the principles laid down therein squarely applies in the present case and as such both the cases must be tried jointly.

Mr. Roy Chowdhury, learned advocate appearing for the State opposes the contentions advanced on behalf of the petitioners and submits that the incidents referred to are distinct and different. The subsequent FIR led to the submission of a chargesheet under Section 302 of the Indian Penal Code wherein a village police was a victim of murder.

Mr. Roy Choudhury, learned advocate further submitted that the initiation of the dispute between two private parties do not have any relationship to an act or action of the law enforcing agency and the victim in both the cases are different. To ask for a joint trial, in such a case which can by no stretch of imagination come within the ambit of 'same transaction', would be a travesty.

I have considered the contentions advanced on behalf of the learned advocates appearing for both the parties and I have also assessed the judgement relied upon by the learned advocate for the petitioner and I find that in the said case the issue of dispute related to a case under Section 304B of the Indian Penal Code and Section 406 of the Indian Penal Code which are related to the same victim.

In this case the attack was on a set of police officials who intended to execute their duty as law enforcing agency while in the

other case the genesis of dispute related to private and personal grudge.

Having regard to the fact that both the cases do not arise out of the same transaction, I am of the opinion that the order so passed by the learned trial court dated 14.01.2021 do not suffer from any illegality, as such, no interference is called for.

However, having regard to the fact that the petitioners are in custody for a considerable period of time, the learned trial court should fix schedule of dates. Each schedule must consist of three dates and there must be a single schedule fixed every fortnight in respect of both the cases of Sandeshkhali P. S. Case No. 211 of 2019 and Sandeshkhali P. S. Case No. 212 of 2019. All efforts must be taken for concluding the trial within a reasonable period of time and the Public Prosecutor conducting the trial would appear and assist the court in respect of the witnesses being present on dates so fixed by the learned trial court. No unnecessary adjournments should be granted to either of the parties.

With the aforesaid observations, the present revisional application being CRR 231 of 2021 is disposed of.

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

Interim order, if any, is hereby vacated.

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]

