

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

Present:

The Hon'ble Justice Ajoy Kumar Mukherjee

C.R.R. 245 of 2019

Syed Ruhul Amin

-vs-

The State of West Bengal

For the Petitioner : Mr. Ayan Bhattacharjee
Mr. Syed Nurul Arefin
Mr. Shrequl Haque
Mr. Debarta Guha

For the State : Mr. Ranabir Roy Chowdhury
Mr. M.F.A. Begg

Heard on : 05.08.2022

Judgment on : 06.09.2022

Ajoy Kumar Mukherjee, J.

1. Present application has been preferred under section 482 of the code of Criminal Procedure for quashing of the charge-sheet being Charge sheet no. 212 of 2018 dated 31.10.2018 under Sections 147/149/153/153A/153B/186/188/120B of the Indian Penal Code along with section 7 of West Bengal animal slaughter control Act, 1950 arising out of Narayangarh Police Station case no. 7 of 2015 dated 07.01.2015 pending before the court of the learned Chief Judicial Magistrate at Paschim Medinipur including the order dated 6th December, 2018, passed in connection therewith.

2. On January 7, 2015, a suo moto First information Report was lodged by officer-in-charge of Narayangarh Police Station against as many as thirteen accused persons including present petitioner, inter alia on the allegations that the accused person without any legal permission conducted a “Jalsa” programme at village Gama where they have slotted three cows in order to provoke persons of other religion and distributed it amongst 1200 visitors of ‘Jalsa’ programme. It is further alleged that in order to conduct said ‘Jalsa’ petitioner and others distributed leaflet in order to flare up communal tension and the entire episode was well planned, ill-intentioned and to spread communal disharmony. The petitioner along with others in order to instigate villagers shouted slogans prejudicial to maintenance of harmony and national integration. Entire programme of cow slaughter in public place was carried on in a planned way under the direct conspiracy of the present petitioner contravening order of public authorities. The activities of petitioners and others were prejudicial to the maintenance of harmony between different religion, racial, language or regional groups or castes or communities, which disturbed the public tranquillity.

3. Learned advocate for the petitioner submits that after purported investigation on 6th December, 2018 the investigating agency filed a charge-sheet being Charge sheet no. 212 of 2018 dated 31.10. 2018 against as many as 13 accused persons and vide order dated 6th December, 2018, the learned Chief Judicial Magistrate was pleased to take purported cognizance, and was pleased to issue warrant of arrest against the petitioner herein. Subsequently

on 15th December, 2018 petitioner surrendered before the Court and obtained bail.

4. He further submits that learned Chief Judicial Magistrate passed the order of taking cognizance, which is not supported by reason. It is trite law that the learned Magistrate has to remain vigilant with regard to the allegations made and not to take cognizance without proper application of mind and he must not accept prosecution story as gospel truth. The magistrate should have taken note of the allegations in entirety and to decide whether any cognizable case is made out against the petitioner herein. He further submits when the subject matter is of involvement of many persons, taking cognizance and initiating proceeding, requires an attitude of more care, caution and circumspection, which was not adhered to in the instant case. Even if the prosecution story is accepted to be gospel truth, then also placement of fact singularly lacks either of the ingredients of the offence alleged. The allegations made in the FIR and the charge sheet are so absurd and inherently improbable on the basis of which no prudent person can ever reach just conclusion, that there is sufficient ground for proceeding against the present petitioner. The story loomed large by the first information report and the charge-sheet suffers from intrinsic hollowness and antagonistic contradictions.

5. He further submits that the cognizance has been taken under Section 147/149/153/153A/153B/186/188/120B of the Indian Penal Code. No sanction was taken which is mandatory. Moreover, the offence under Section

147 has also not been made out since there was no allegation of rioting and there is no allegation of unlawful assembly. Moreover in the impugned charge sheet, no specific role has been attributed to the petitioner. Even the statement of witnesses purportedly recorded under section 161 of Cr.P.C. also do not figure out the name of the petitioner far less the specific role of the petitioner for which present petitioner can be held liable.

6. He further submits that the charge under section 7 of the West Bengal Animal slaughter control Act, 1950 has been dropped, while taking cognizance by the Magistrate, therefore the fulcrum of the prosecution case, which centres round, cow slaughter has also crippled into dust.

7. Relying upon Apex Court Judgment in ***D. Devaraja Vs. Owais sabear Hussain***, reported in **(2020) 7 SCC 695** petitioner prayed for quashing the entire proceeding.

8. Learned advocate for the State submits that investigation has already been ended in charge-sheet and learned court has already taken cognizance of the offence alleged. The present petitioner is the President of the group that has caused the incident. Moreover, under the leadership of the present petitioner “Jalsa” was arranged, without taking permission from competent authority. The petitioner all along absconded during investigation.

9. Accordingly, learned advocate for the State submits that even if the contention of the petitioner be taken as true that sanction is required for other offences, there is no bar to take cognizance by the court and to proceed in respect of other offences for which sanction is not required to be taken.

10. In this context prosecution relies upon a judgment of the Apex Court in ***Basir-ul-Haq & others Vs. State of West Bengal***, reported in **AIR 1953 SC**

293 and pointed out paragraph 9 of the judgment which runs as follows:

“9. Section 195 of the Criminal Procedure Code, on which the question raised is grounded, provides, inter alia, that no court shall take cognizance of an offence punishable under Sections 172 to 188 of the Indian Penal Code, except on the complaint in writing of the public servant concerned, or some other public servant to whom he is subordinate. The statute thus requires that without a complaint in writing of the public servant concerned no prosecution for an offence under Section 182 can be taken cognizance of. It does not further provide that if in the course of the commission of that offence other distinct offences are committed, the Magistrate is debarred from taking cognizance in respect of those offences as well. The allegations made in a complaint may have a double aspect, that is, on the one hand these may constitute an offence against the authority of the public servant or public justice, and on the other hand, they may also constitute the offence of defamation or some other distinct offence. The section does not per se bar the cognizance by the Magistrate of that offence, even if no action is taken by the public servant to whom the false report has been made. It was however argued that if on the same facts an offence of which no cognizance can be taken under the provisions of Section 195 is disclosed and the same facts disclose another offence as well which is outside the purview of the section and prosecution for that other offence is taken cognizance of without the requirements of Section 195 having been fulfilled, then the provisions of that section would become nugatory and if such a course was permitted those provisions will stand defeated. It was further said that it is not permissible for the prosecution to ignore the provisions of this section by describing the offence as being punishable under some other section of the Penal Code.”

11. He further submits that sanction can also be taken at any stage of the proceeding and merely because sanction is required to be taken in respect of any particular offence, under the provision of the Code, the criminal proceeding must not be quashed specially when charge-sheet has already been submitted and cognizance has been taken, by the court.

12. Having considered the facts and circumstances of the case and materials available in the case diary, it appears that the first information report prima facie discloses offence against the accused no. 1/petitioner. Furthermore, during investigation, it transpires that the statement of the witnesses recorded under section 161 Cr.P.C. and other materials, *Prima facie*, directed to arrow of acquisition against the present petitioner. The investigation has already been ended in charge-sheet and I am informed that the matter is pending for framing of charge.

13. The guideline for quashing of a proceeding as laid down in ***State of Haryana Vs. Bhajan Lal***, reported in **AIR 1992 SC 604** is only when the petition of complain does not disclose a prima facie cognizable offence or when the allegations in the petition of complain or the FIR are inherently improbable or absurd, or when the petition of complain or the FIR is *mala fide* one intend to harass the opponent, or when no evidence of legal character is available or when there is legal bar to the entertainability of the application that a criminal proceeding should be quashed.

14. In the instant case the allegations in the FIR and other materials collected during investigation clearly constitutes offence against the present petitioner. Whether the allegations are true or untrue would have to be decided in trial. In exercise power under section 482 of the Cr.P.C., the High Court should not ordinarily embark upon an enquiry into whether there is reliable evidence or not, except in exceptionally rare cases where it is patently clear that the allegations are frivolous or do not disclose any offence. Settled law is,

the jurisdiction under section 482 of Cr.P.C. has to be exercised sparingly, carefully and with caution only when such exercise is justified by the specific provisions of section 482 of the Cr.P.C. itself. Here there is nothing to show that further continuance of present proceeding will be an abuse of process of the court.

15. Considering the aforesaid facts and circumstances of the case, I find that this is not a fit case, where invoking power under Section 482 of the Code of Criminal Procedure, the entire proceeding can be quashed merely on the ground that sanction has not been obtained in respect of certain offence, or that evidence collected so far is not sufficient for conviction of petitioner, or asbecause cognizance has not been taken under section 7 of West Bengal animal slaughter control Act, 1950, so entire case does not have any leg to stand.

16. Accordingly, CRR 245 of 2019 is dismissed. However, liberty is given to the petitioner to agitate all these points including the requirements of sanction for proceeding under the relevant provisions at the time of framing of charge, if the charge has not yet been framed. In the event charge has already been framed then liberty is given for making prayer for alteration of charge. If such prayer is made before the court, the court will dispose of such prayer on merits in accordance with law.

There will be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(AJAY KUMAR MUKHERJEE, J.)