22.12.2022

Court No.35
Item No. 1

D.Hira

CRR 103 of 2015

Biman Kumar Kundu
Vs.
The State of West Bengal & Anr.

Mr. Achyut Basu,
Ms. Punam Basu,
Mr. Somen Basu.
... for the petitioner

Mr. Narayan Prasad Agarwala,
Mr. Pratick Bose.
... for the State

This revision is preferred by the petitioner to challenge the proceedings in connection with G.R. Case No. 568 of 2010 under Sections 381/114 of the Indian Penal Code. The connected FIR is Chetla Police Station Case No. 17 of 2010 dated 17th February, 2010.

The police case originated on the basis of the FIR lodged by the Manager (Commercial) of Damodar Ropeway and Construction Co. Pvt. Limited. Theft of heavy machineries and valuable furniture from the godown of the said company was alleged therein. Name of the security guard as well as those connected with the security services company namely 'Atlas Security Services' were implicated. Petitioner's name also appears in the FIR.

It is stated that on 18th January, 2010 he along with some other employee visited the godown and found mischeif as mentioned above. The above-mentioned police case was registered on the basis of the said FIR dated 15th February, 2010. Formal FIR was drawn on 17th February, 2010 and thus the investigation started.

Ultimately, the investigation culminated into filing of charge-sheet by police on 31st March, 2010. In the charge-sheet the present petitioner was named as an accused person in the case. The petitioner is aggrieved of the same and has prayed for quashing of further proceedings pursuant to the said police case against him.

Mr. Basu, learned Advocate appearing for the petitioner has pointed out to the fact that the petitioner has never been connected with 'Atlas Security Services' against whom the allegations are mainly directed. By referring to an annexed document that is a letter dated 1st February, 1985 issued by the Managing Director of Damodar Ropeway and Construction Co. Pvt. Limited, he submits that the petitioner was appointed in the said company by dint of the said letter as Chaser-cum-Office Assistant. At the relevant time, he was discharging duties in the office and not at the godown.

It is further submitted that neither the FIR nor any other document or material suggest about any involvement of the petitioner in commission of the crime as alleged.

It is further submitted that no case against his client has been made out to proceed with trial against him and that would be only an abuse of the process of Court in accordance with the settled principles.

During his argument, he has relied on the following three (3) judgments,

1. ***State of Haryana & Others vs. Ch. Bhajan lal & Others*** reported in ***(1992) AIR (SC) 604.***
2. ***State of Karnataka vs. Muniswamy & Others*** reported in ***(1977) AIR (SC) 1489.***
3. ***Mihir Kumar Ghosh vs. State of West Bengal & Ors.*** reported in ***(1990) 2 CALLT 48 HC.***

He has prayed for quashment of the proceedings in this case so far as the present petitioner is concerned.

State is represented. Mr. Agarwala, learned Advocate has submitted the case diary in Court today. He submits that the petitioner was the Security Supervisor attached with the company Atlas Security Services. He has also pointed out to the statement of witnesses available in case diary who suggests that those documents and materials clearly disclose against the petitioner to be involved in the instant case.

According to him, the cognizable offence has been made out against this petitioner during investigation and he should be committed to trial, for the ends of justice.

Heard submissions of both the parties and perused the materials and also the case diary. The law is now very well settled as regards the scope of interference of the revision Court by exercising powers under Section 482 of the Code of Criminal Procedure.

The judgment of **Bhajanlal's** case referred to on behalf of the petitioner may be relied on, on this aspect. The Hon'ble Supreme Court held:-

"105. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decision relating to the exercise of the extra-ordinary power under Article 226 or the inherent powers u/s 482 of the Code which we have extracted and reproduced above. We give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of the any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

1. ***Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.***
2. ***Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers u/s 155(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.***
3. ***Where the uncontroverted allegations made in the FIRor complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.***

4. ***Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated u/s 155(2) of the Code.***
5. ***Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.***
6. ***Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is initiated) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Ac, providing efficacious redress for the grievance of the aggrieved party.***
7. ***Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."***

By following the dictum, this Court is to see if in this case the cognizable offence is made out against the petitioner for him to go into trial or not, if the proceedings against him as initiated should continue or not on the basis of the *prima facie* case made out against him, if any.

The FIR dated 15th February, 2010 disclose the petitioner to be a visitor to the godown and detector of the mischief.

On careful perusal of the FIR no allegation or criminal action with criminal intent of him could be detected. The letter of appointment of the petitioner dated 1st February, 1985 shows his relation with the complainant company and thus the submission as regards his status as made by Mr. Agarwala cannot be accepted. Contrarily, his involvement is far from being found from the materials available on record.

It is a trait law that the petitioner's involvement in commission of the alleged act with criminal intention to commit the crime and a case of cognizable nature to have been made out against him are the pre-requisites so that a criminal proceeding can sustain in the eye of law.

In my considered opinion in this case all these ingredients are not available so far as the present petitioner is concerned.

The other points raised by Mr. Basu, learned Advocate for the petitioner is that of delay in registering the FIR. Record reveals that after lodging the FIR, the delay of two (2) days has happened in registering the same. On this aspect, he has relied on the ratio decided in **Mihir Kumar Ghosh's** case as mentioned earlier.

In the said judgment the Hon'ble Court has been pleased to find that,

"13. In the light of the above and on in depth analysis of the judgment there remains no manner of doubt that the inarticulate promise of the right to speedy trial and the necessity of spelling out an outer limit beyond which a prosecution in original trial cannot be allowed to trespass have been spelt out in brief and yet categorical judgment. Indeed, when viewed in the larger prospect their Lordships of the Supreme Court in the aforesaid judgment seemed to have spelt out that delay of years even dehors any question of default would defeat justice and, therefore, a trial beyond a period of 7 years from the date of the offence is not to be at all countenanced. Delay was by itself the ground for setting aside the order of the High Court without any attempt to apportion the causes therefor or any blame in this context appertaining to the accused".

Accordingly, in my considered opinion, following the dictum of the same, this proceedings against the petitioner, should also go. On the discussion as above, I find that committing the present petitioner to trial in this case should only amount to sheer abuse of the process of the Court which is an illegality in the eyes of law.

Hence, petitioner's revision case is legible to be allowed.

On the above premises, the revision case being CRR 103 of 2015 is allowed.

Case diary be returned.

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

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

(Rai Chattopadhyay, J.)