

28.11.2022

Court No.35
Item No 6

D.Hira

CRR 271 of 2016

**Dhirendra Nath Roy
Vs.
The State of West Bengal & Anr.**

Mr. Swapan Kumar Mallick,
Ms. Sudeshna Das.

... For the petitioner

Mr. Saryati Datta.

... for the State

Petitioner is a Forest Department Official working under the Government. He has been alleged of offence under Sections 325/308 of the Indian Penal Code in a case lodged against him being Kalchini Police Station Case No. 251 of 2009 dated 30th December, 2009 under Sections 325/308 of the Indian Penal Code.

Before that, the petitioner filed Kalchini Police Station Case No. 249 of 2009 dated 30th December, 2009 under Sections 147/148/149/323/325/447/533/186/506, I.P.C. In the same, the petitioner contended that during the course of his duty on the relevant date he and his teammates were attacked by some miscreants who committed to cause damage to the various natural properties in the forest and that's why, as a protection measure he shot from his gun and one of the miscreants got injured. FIR was lodged against about 15 (fifteen) accused persons.

Wife of the injured person has filed above complainant in Kalchini Police Station Case No. 251 of 2009 dated 30th December, 2009 under Sections 325/308 of the Indian Penal Code against the present petitioner, who has been alleged for willful commission of offence by the petitioner injuring her husband.

Mr. Mallick, learned Advocate on behalf of the petitioner has made submissions on two fold grounds that is firstly, that the petitioner being a Government servant and the incident having happened at the

point of time when the petitioner was discharged his official duty, it was incumbent for the prosecution to obtain sanction under the relevant provisions of law in order to prosecute against him. He mentions the provision under Section 197 of the Code of Criminal Procedure.

It is submitted that in this case the same has not been done and thus, any prosecution is only de hors the law and subject to quashment against him.

The second point as has been urged on behalf of the petitioner is that the criminal case being Kalchini Police Station Case No. 251 of 2009 dated 30th December, 2009 under Section 325/308 of the Indian Penal Code is an aftermath of the previous case being Kalchini Police Station Case No. 249 of 2009 dated 30th December, 2009 under Sections 147/148/149/323/325/447/533/186/506 of the Indian Penal Code lodged by the present petitioner in which the husband of the defacto-complainant happens to be one of the accused persons. Therefore, the present case against the petitioner is only malicious, is a counter-blast and does not have any foundation of truth in the allegations made therein.

Mr. Saryati Datta, learned Advocate appears for the State and submits in Court copies of case diary in connection with both the police cases.

Objections have been raised on the ground that injury report and witnesses statement so far as Kalchini Police Station Case No. 251 of 2009 dated 30th December, 2009 under Sections 325/308 of the Indian Penal Code is concerned, strongly suggest about the involvement of the accused persons in commission of the alleged offence as envisaged in the FIR itself.

He shows the materials available in case diary in connection with Kalchini Police Station Case No. 249 of 2009 dated 30th December, 2009 under Sections 147/148/149/323/325/447/533/186/506 of the Indian Penal Code that the nature of injury appears to be simply there

and, therefore, there appears some discrepancy in the statement of the present petitioner as made in the FIR and the materials available in case diary, collected during investigation.

According to him, the present case does not deserve to be quashed against the petitioner.

It is learnt that, in both the cases charge-sheets have already been submitted. Both the cases are ready for commencement of trial.

I have also perused the materials available before me in record and those available in case diary. Since the investigation has already completed and the trial could begin at any point of time, let there be a direction that the parties shall take part in trial which may be disposed of by the Trial Court within a time bound period i.e., within a period of one year from the date of this order.

It is further directed that necessary steps be taken for conducting both the trials by the same Court.

Parties shall be at liberty to espouse any of their points before the Trial Court within this period, all the points being kept open for adjudication.

On the direction as above, CRR 271 of 2016 is disposed of being allowed in part.

Case diary in both cases be returned.

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

(Rai Chattopadhyay, J.)

