

Form No. J(2)

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION

Present:

The Hon'ble Justice Jay Sengupta

C.R.R. 813 of 2022

Nitya Gopal Nath

-vs-

The State of West Bengal

For the Petitioners : Mr. Santanu Malkhandi
Mr. Sailendra Nath Chakrabarty

Heard on : 16.03.2022

Judgment on : 16.03.2022

Jay Sengupta, J.:

This is an application quashing of an investigational proceeding under Sections 302, 209, 506 read with Sections 34 and 120B of the Indian Penal Code.

Learned counsel appearing on behalf of the petitioner submits as follows. The petitioner is an accused in this case. The FIR was lodged by the de facto complainant over the death of his son. In the FIR, he refers to a quarrel between a co-accused and the deceased. However, no overt act against the present petitioner has been alleged in the same. The allegations are based primarily on surmises and conjectures. On the basis of such allegations, the FIR cannot be sustained as against the present petitioner. The petitioner is absolutely

innocent and has not committed the offence as alleged. Reliance is placed on a decision of the Hon'ble Apex Court in the case of *Geo Varghese vs. The State of Rajasthan & Anr. in Criminal Appeal No.1164 of 2021*, where a proceeding under Section 306 of the Indian Penal Code was quashed at the initial stage as the FIR did not make out a prima facie case.

I have heard the submissions of the learned counsel appearing on behalf of the petitioner and have perused the revision petition.

In the FIR the de facto complainant alleged that his son was having a quarrel with a co-accused. He categorically stated that on a particular date, i.e., on January 28, 2022 at about 7:00 a.m. a quarrel started between the said co-accused and the petitioner. Then the said co-accused called his friends, including the present petitioner, and the de facto complainant went there and settled the dispute for then. After sometime, the victim went missing and the said other co-accused laughed at the de facto complainant saying that searches would not be of any help. After sometime, the dead body of the victim was found.

Therefore, this is evidently a case of circumstantial evidence. It is not that in all cases of murder, there has to be an eyewitness.

A clear and categorical allegation is made in the FIR that there was a conspiracy between the assailants in doing away with the victim. There is also the mention of a quarrel between the co-accused and the petitioner.

The proceeding is at a very nascent stage. Investigation is on. At this stage, there is no way that this Court can interfere with the proceeding on such ground that no overt act has been attributed to the present petitioner directly connecting him to the alleged murder.

Whether the petitioner is innocent or not is a disputed question of fact which cannot be gone into by this Court before a full-fledged trial.

The decision relied upon by the petitioner is clearly distinguishable on facts. There, neither did the FIR nor the suicide note in question make out a prima facie case against the accused therein. That is why the Hon'ble Apex Court interfered with the proceeding. This is clearly distinguishable from the present facts.

In view of the above, I do not find any merit in this revisional application.

Accordingly, the revisional application is dismissed.

However, there shall be no order as to costs.

Urgent photostat certified copies of this order may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

(Jay Sengupta, J.)