

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

Present:

The Hon'ble Justice Ajoy Kumar Mukherjee

C.R.R. 707 of 2019

Prasenjit Saha

-vs-

The State of West Bengal & Ors.

For the Petitioner : Mr. Aniket Mitra

Heard on : 14.7.2022

Judgment on : 19.07.2022

Ajoy Kumar Mukherjee, J.

1. The present revisional application has been preferred for setting aside the impugned order dated 29.8.2018 passed by the learned Chief Judicial Magistrate, Hooghly in C.R. case no. 426 of 2014.

2. The gist of the allegation made in the petition of complaint is to the effect that the accused persons in collusion and in connivance with each other conjointly disturbed the peaceful possession of the land and property belonging to the petitioner situated at premises no. 627, Dharampur Halderbagan, Near Gangatala, P.O & P.S. Chinsurah, District-Hooghly in order to grab the land allotted to the father of the petitioner by the Refugee Relief and Rehabilitation Department. It is contended that on 5.3.2014 and 8.3.2014 at about 8 A.M.,

the accused persons wrongfully trespassed into the property of the complainant, broke the boundary wall on the eastern side, cut down the live trees, damaged fencing and broke the tiles by throwing brick bats. Again on 13.3.2014 at about 12 P.M., accused persons committed the same offence and looted away the household articles for which the complainant lodged a general diary being G.D.E no. 1650 dated 13.3.2014. Local police station refused to register the complaint for which a copy of complain was sent by registered post to the higher authority but since no steps were taken by the police authorities, the instant complaint was lodged under Section 200 of the Code of Criminal Procedure before the Id. Chief Judicial Magistrate, Hooghly at Chinsurah against the accused persons. Accused/opposite party No. 2 to 11 are public servant and rest opposite parties/accused are not public servant.

3. On receipt of the complaint, the Id. Chief Judicial Magistrate was pleased to take cognizance upon the offence and transferred the case record to the court of Judicial Magistrate, 5th Court, Hooghly for disposal.

4. On receipt of the case record, the transferee court examined the complainant/petitioner herein on solemn affirmation and issued process under Sections 148/427/379/448/342/504/506/120B/201/ 119 of the Indian Penal Code against opposite parties/accused persons. Subsequently, the accused namely, Susanta Mukherjee filed an application on 9.10.2015 for his discharge for want of sanction to prosecution under Section 197 of the Code of Criminal Procedure. The same prayer were also made by the accused namely, Gouri Kanto Mukherjee, Himangshu Chakraborty, Krishna Kanta Ghosh and

Arpita Ghosh on 20.12.2015 and by another accused namely, Partha Sarathi Bhowmick on 22.3.2016. The petitioner herein filed an application before the trial court praying for time to obtain sanction to prosecution by enclosing relevant documents addressed to the various authorities. It is alleged further that learned court below, without applying his judicial mind to the facts and circumstances of the case, discharged all the accused persons including those who are not at all public servants vide impugned order dated 29.8.2018 with the observation that petitioner has not obtained sanction for prosecution and that the petitioner is reluctant to proceed with the case which is completely incorrect inasmuch as the petitioner on various dates, filed adjournment petitions on the ground of illness enclosing medical papers.

5. No one appears on behalf of the opposite parties.

6. The short question of law involved in the revisional application is whether the Ld. Magistrate was justified in discharging all the accused persons by the impugned order dated 29.8.2018 with the observation that the sanction for prosecution has not been obtained and that the petitioner is reluctant to proceed with the case.

7. For better understanding, the relevant portion of the impugned order may be quoted:

“In this case sanction has not been obtained from the Governor/Appropriate Authority before filing of this case and the accused/petitioners are the public servants. I also find that the complainant is reluctant to proceed with this case and without obtaining sanction the case has been filed by the complainant against the Public Servants and other accused persons which is necessary for the purpose of proper adjudication. I think the accused persons should be discharged from this case.

*Hence the accused persons are hereby discharged from this case and the concerned sureties be also discharged from their respective bail bonds.
All the petitions are hereby disposed of.”*

8. Mr. Aniket Mitra, learned advocate for the petitioner submits that it has been consistently laid down that the protection under Section 197 of the Code is available to the public servants when an offence is said to have been committed “while acting or purporting to act in the discharge of their official duty”.

9. Learned advocate for the petitioner further submits that some of the persons claiming themselves as Government employee filed the application for their discharge on the ground that no sanction being obtained from the competent authority to initiate proceeding against them, but the opposite party nos. 12 to 34 herein who were also the accused in the said case, are not public servants within the meaning of Section 21 of the Indian Penal Code and therefore, the question of obtaining sanction to prosecute them, do not and cannot arise at all but they are also discharged from the case. He further submits that it is settled law that question of sanction under Section 197 of the Code can be raised any time after the cognizance may be immediately after cognizance or framing of charge or even at the time of conclusion of trial and after conviction as well.

10. Learned advocate for the petitioner also submits that it is also well settled that sanction is only required if the act done by the public servants is in the course of the performance of his official duty was a reasonable one and it must not be pretended nor fanciful. Accordingly, whether the petitioner who

made application for discharge on the ground that they are public servants cannot get any blanket order for discharge unless it is shown that the act done by them, was in course of their official duty and not performed using the office as a mere cloak for unlawful gains. In order to come to the conclusion as to whether their act was in course of discharging their official duty, is required to be examined sometimes during the trial and in such a case, the question of sanction should be left open by the court to be decided in the main judgement which may be delivered upon conclusion of the trial. In this context, the petitioner has relied upon a judgment of Apex Court in the case of **Station House Officer, CBI/ACB/Bangalore vs. B.A. Srinivasan and another** reported in **(2020) 2 SCC 153**.

11. Mr. Mitra, learned advocate for the petitioner further relied upon principles laid down in paragraph 13 of the judgment in ***Rishipal Singh vs. State of U.P & another*** reported in **(2014) 7 SCC 215** and contended that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made in the complaint prima facie establish the case and the continuation of the complaint whether amounts to abuse of process of law or if it is continued, it would result in miscarriage of justice, or when the court comes to a conclusion that quashing the proceeding would otherwise serve the ends of justice.

12. In the present context as it appears that not only the public servants but also the other accused persons i.e. opposite party nos. 12 to 34 are also discharged on the ground that complainant was reluctant to proceed with the

case. It has not been mentioned in the order as to which dates complainant was absent and whether his absence has been substantiated by documents or not. In the absence of any specific observation by the Magistrate as to why he came to the conclusion that complainant is reluctant to proceed with the case, a casual remark that he finds that the complainant is reluctant to proceed with the case, in support of discharge of all the accused persons is palpably illegal, unjust and not sanctioned by law. Even in case of discharging public servants, court is duty bound to record as to why they are liable to be discharged for want of sanction to prosecution and that sanction to prosecution was required as they had acted in discharge of their official duty and that such question is not required to be kept open for further examination.

13. In view of the above, the impugned order dated 29.8.2018 passed by the learned Chief Judicial Magistrate, Hooghly in C.R. case no. 426 of 2014 is hereby set aside. Learned Magistrate is directed to decide the discharge applications filed by some of the petitioners, afresh in the light of discussion made above and to pass a fresh order after hearing both the parties and to dispose of the same within a period of three months.

14. Accordingly, the revisional application being CRR 707 of 2019 is disposed of.

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

(AJAY KUMAR MUKHERJEE, J.)