

D/L32
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C.R.R.727 of 2021

In Re: An application under Section 482 of the Code of Criminal Procedure, 1973;

Bijay Kumar Agarwal and others
Versus
The State of West Bengal and others

Mr. Sourav Chatterjee,
Mr. Koustav Bagchi,
Mr. Sourav Mukherjee,
Mr. Debayan Ghosh,
Ms. Priti Kar.

...for the petitioners.

Mr. Sudip Ghosh,
Mr. Bitasok Banerjee.

...for the State.

Mr. Somopriyo Chowdhury,
Mr. Ayush Jain.

...for the opposite party no.3.

The subject matter of challenge in this revisional application relates to the charge-sheet filed in connection with Kalyani Police Station Case No.172 of 2015 dated 20.03.2015 under Sections 409/120B of the Indian Penal Code read with Sections 37/51/63/65/69 of the Copyright Act, 1957. Charge-sheet reflects that the petitioners before this Court are Bijay Kumar Agarwal, Director of GTPL Kolkata Cable and Broadband Pariseva Limited, Imtajuddin Mondal @ Imtiazuddin Mondal, Asit Biswas, Abhijit Chakraborty, (petitioner nos.2 to 4, Local Cable Operators of GTPL).

The Investigating Agency on conclusion of investigation submitted charge-sheet and relied upon seven witnesses. So far as

the formal part of the charge-sheet is concerned under serial no.10 the properties/articles which were seized, were from Totan Chakraborty, the complainant on his production and from Barnomoy Digital Private Limited.

Mr. Sourav Chatterjee, learned advocate appearing for the petitioners submits that even if the allegations made in the letter of complaint and the accompaniments of the charge-sheet are accepted to be true, no case has been made out for proceeding against the present petitioners under the relevant sections of law for which they have been charged in the charge-sheet.

Mr. Somopriyo Chowdhury, learned advocate appearing for the opposite party no.3 submits that the petitioners in conspiracy with each other tried to cause wrongful loss to the business of the complainant/company and to that extent accounted for a lesser number of subscribers by misusing the encryption code and by catering to a larger number of subscribers, thereby enriching themselves by way of wrongful gain.

Mr. Sudip Ghosh, learned advocate appearing for the State opposes the contentions of Mr. Chatterjee and draws the attention of this Court to the statement of the witnesses under Section 161 of the Code of Criminal Procedure.

I have assessed the materials appearing in the case diary and the nature of the allegations contained therein, I find that the basis of foundation of initiation of this FIR was in tune with the submissions advanced by Mr. Chowdhury, learned advocate appearing for the opposite party no.3.

The Investigating Agency obviously were supposed to collect materials which could relate to the misuse of the encryption code and establish a relationship between the few subscribers to which the availability of telecast was initially shown and in the alternative wrongful gain by which the accused/company enriched themselves by catering large number of subscribers.

On an assessment of the materials except the statements under Section 161 of the Code of Criminal Procedure, I am of the opinion that Investigating Agency has failed to make out such case so as to bring the whole allegations relating to Section 409/120B of the Indian Penal Code or for that matter any offence under Sections 37/51/63/65/69 of the Copyright Act, 1957.

Having regard to the same, I am of the view that further continuance of Kalyani Police Station Case No.172 of 2015 dated 20.03.2015 under Sections 409/120B of the Indian Penal Code read with Sections 37/51/63/65/69 of the Copyright Act, 1957 and the charge-sheet filed therein along with all orders passed therein are abuse of the process of the court, the continuance of which would call for miscarriage of justice.

Accordingly, further continuance of Kalyani Police Station Case No.172 of 2015 dated 20.03.2015 under Sections 409/120B of the Indian Penal Code read with Sections 37/51/63/65/69 of the Copyright Act, 1957 (G.R. Case No.471 of 2015) along with the charge-sheet is hereby quashed.

Thus, CRR 727 of 2021 is allowed.

Pending application, if any, is consequently disposed of.

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

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

(Tirthankar Ghosh, J.)