

13.12.2022
Item No. 1
BR

CRR 931 of 2007

In the matter of : Jayanta Ghosh

Mr. B.Bhattacharyya,
Mr. Karan Bapuli

... for the petitioner

Mr. Saswata Gopal Mukherjee,Ld. P.P.
Mr. Sandip Chakraborty ... for the State

This is an application under Section 482 of the criminal Procedure Code filed by the petitioner seeking an order of quashment of proceeding being GR Case No. 1993 of 1995 pending before the learned 4th Court of Metropolitan Magistrate , Calcutta under Sections 120B/292/294 of the Indian Penal Code,1860. Mr. Sandip Chakraborty, learned counsel for the State submits a report , let it be taken on record.

Briefly stated a theater show was organised at the Minarva theater Hall under the Title 'Madam-X' allegedly having some pornographic content and it was full of obscene words and Hindi film songs were also used in the said drama. The Officer – in-Charge of Bartola P.S. registered a case being Bartola case No. 313 dated 1.11.1995 . The petitioner is one of the 13 accused persons against whom police submitted charge sheet.

According to the petitioner he was watching the drama and did not perform any role. Admittedly, a drama was enacted. Mr. B. Bhattacharyya, learned counsel representing the petitioner submits that the petitioner was a mere spectator. He was watching

theater and nothing else. A spectator cannot be saddled with criminal liability within the meaning of Section 294 of the Indian Penal Code. He was neither doing any obscene act in any public place nor he was singing, reciting or uttering any obscene words in or near any public place. Therefore, he cannot be made culpable for his mere presence in the theater hall. To buttress his argument Mr. Bhattacharyya relied upon several judgments pronounced in the case of Gopal Mukherjee & Ors. -vs- The State, reported in 1991 SCC Online Cal 68, Kshitish Chandra Roy Chowdhury -vs- State of West Bengal, reported in 1998 SCC Online Cal 164, Pradip Mitra -vs- State of West Bengal, reported in 2002 SCC Online Cal 472, Dr. B. Rosaiah -vs- State of Andhra Pradesh, reported in 1990 SCC Online AP 309, Animesh Chandra Sengupta -vs- State of West Bengal, reported in 2004 SCC Online Cal 18 and Narendra H. Khurana -vs- Commissioner of Police, reported in 2004 (20 Mh. L. J).

It goes without saying that in order to invoke the provision of Section 294 of the Indian Penal Code mere performance of obscene or indecent act is not sufficient. It requires further prove to establish that it was to the annoyance of others. Annoyance constitutes an essential component to consider someone guilty to the charge under Section 294 of the Indian Penal Code. In this given case there is no 'annoyance' of others of innocence and admittedly the petitioner did not take any part in the performance of drama. The Inspector of Police attached to Bartola P.S. played the role of moral guardian. When the drama had nothing to do with the law and order situation, police had no role to interfere with the performance and booked the participants for to speak

of spectators under Sections 292 and 294 of the Indian Penal Code. Staging a drama cannot be held to be an offense within the meaning of Section 292 or Section 294 of the IPC in absence of any ingredient to constitute annoyance of others. True it is only the petitioner has approached this Court for necessary order out of 13 persons arrayed as accused. The proceeding before the learned trial Court is pending since last 27 years, if it is allowed to remain in force it would amount to abuse of process of law .

The revisional application is quashed not only qua the petitioner but as a whole.

Let a copy of the order be sent to the learned trial Court for information and necessary action.

All parties are to act on the server copy of this order duly downloaded.

Urgent photostat certified copy of this order, if applied for, be given to the learned Advocates for the parties on the usual undertakings.

(Siddhartha Roy Chowdhury, J.)