

12.12.2022
Court No.35
Item No. 13
pk

CRR 569 of 2015

Nemai Manna and others
Vs.
State of West Bengal and another

Ms. Devipriya Mitra

... For the Petitioners.

Mr. Saswata Gopal Mukherjee, Ld. P.P.,
Mr. Imran Ali,
Mrs. Debjani Sahu

... for the State.

Petitioners are the accused persons in G. R. Case No. 1685 of 2010, arising in connection with Amta Police Station Case No. 213 of 2010 dated 23.08.2010 under Sections 379/411/34 of the IPC.

FIR dated 23.08.2010 was lodged by one Sunil Kumar Mitra alleging, inter alia, murder of his younger brother, Nemai Mitra and also of theft of gold ornaments. The informants named by the present petitioners are accused persons who have been involved in commission of the crime as alleged. After investigation, the police has submitted charge sheet in the case on 30.06.2011. Charge sheet was filed under Sections 379/411/34 of the IPC. One of the accused persons, namely, Dipa Mitra was discharged from the case in absence of any materials available against her.

The petitioners/accused persons have come up before this Court by filing the present revision under Sections 482 of the Cr. P. C. to pray for quashing of the entire proceedings as about against them. The grounds, inter alia, are that there would be no material

available against the petitioners insofar as the offence under Section 379 of the IPC is concerned, that the FIR if taken at its face value does not disclose any offence by the petitioners as alleged, that the petitioners' involvement has not been established during investigation by any cogent documents, that the present criminal case against the petitioners is only baseless and should be quashed and set aside.

Referring to the materials collected by the Investigating Officer during investigation, it is submitted that the basic ingredients of the offence under Section 379 of the IPC would not be available in this case against the petitioners and prima facie no case is established against him.

On behalf of the State, vehement objections have been raised on the ground that strong prima facie materials are available against the petitioners, particularly in view of the seizure list prepared during investigation. The learned advocate has also pointed out to the statements of the seizure witnesses recorded under Section 161 Cr. P. C. as available in the case diary. It is submitted that all these materials would form a very strong case against the petitioners for which they may be directed to face the trial and that the State should get an opportunity to bring home the charges against them.

Perused the materials available on record and also in the case diary, which is submitted in Court on behalf of the State. The law as to when a proceeding can be quashed against the accused persons are very well settled now. The prima facie materials strongly suggesting against the guilt of the accused persons would not prompt this Court to quash the proceeding and the accused persons

should in that case face the trial. However, in absence of the same when accusation against the accused persons, in this case the petitioners, would not constitute an offence or would not prima facie indicate about their involvement in commission of the alleged offence, the revision court would certainly interfere into the proceedings for quashing of the same.

In this particular case, the specific allegation is of theft under Section 379 IPC and according to the State, the seizure list indicating seizure of the theft articles would be the strong prima facie material to discard the petitioners' prayer as above. After considering the entire gamut of the case, I am inclined to differ with such submissions and find that during investigation neither any specification of the stolen property has come up on record by way of mentioning the particulars thereof or by producing the supporting documents for purchase of the same. Such accusations are brought on record only evasively. Therefore, only evasive allegations without any supporting material collected during investigation to substantiate such allegations should not compel the petitioners in this case to face trial as envisaged in the principles laid down by the Hon'ble Supreme Court in various judicial verdicts. It can be said that the same would amount to be an abuse only of the process of the Court.

In this case, therefore, I am constrained to hold that against the petitioners no prima facie material could be found regarding their involvement as well as those are insufficient to even constitute an offence as alleged against them in this case. Therefore, in the backdrop of this particular case and following such principles of law

in this regard I am constrained to hold that the prosecution against the petitioners in this case would result into abuse of court process and should not be continued any further.

Hence, the revision is allowed. Proceeding in connection with G. R. Case No. 1685 2010 is quashed and set aside.

Case diary has been returned to the learned advocate for the State and the Lower Court Records be sent back immediately.

Photostat certified copy of this order, if applied for, be given to the parties on urgent basis.

(Rai Chattopadhyay, J.)