

26.04. 2022
item No.1
n.b.
ct. no. 34

CRR 949 of 2018
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IA No. CRAN 1 of 2020(Old No. CRAN 4650 of 2020)

Tapan Kumar Bera & Anr.
Vs.
The State of West Bengal & Anr.

Mr. Kallol Mondal,
Mr. Anindya Bose,
Mr. Krishan Ray,
Mr. Diptendu Mondal

.....for the Petitioners

Ms. Zareen Naseema Khar,
Ms. Manisha Sharma
.....for the State

Mr. Arindam Jana,
Mr. Jakir Hossain,
Mr. Kanailal Samanta

.... For the opposite party no.2

The present revisional application has been preferred challenging the proceedings arising out of GR Case no.434 of 2012 pending before the Court of Learned Additional District and Sessions Judge, 1st Court, Tamluk corresponding to Bhabanipur Police Station case no.89 of 2012 dated 21.4.2012 under Sections 409/34 of Indian Penal Code.

The petitioner is aggrieved by the order dated 13.2.2018 passed by the Learned Judge Special Court, Tamluk Purba Medinipur in Case no.T.R(409) 01 of 2015 wherein the prayer for discharge of the petitioners were rejected.

Mr. Mondal, learned advocate appearing for the petitioners submits that the petitioners have been implicated in the instant case out of grudge by the complainant. The headmaster of the School has already been implicated under Section 409 of the Indian Penal Code. The petitioners acted bonafidely and returned the excess money. They have been made liable for their acts. In fact, the District Inspector of Schools has opined that the mistakes are irregularities, and the excess withdrawal referred to was in course of day to day regular running of the school for which resolutions were taken by the Managing Committee and the withdrawal was affected.

Ms. Sharma, learned advocate appearing for the State produced the Case Diary and drew the attention of the Court to the different documents, which have been collected by the Investigating Agency in course of investigation including bearer cheque, which was presented to the bank for withdrawal of amount.

Mr. Jana, learned advocate appearing for the private opposite party opposes the prayer advanced by Mr. Mondal.

I find although the case was initiated for misappropriation of sum of Rs.23,000/-(approx.) but the Investigating Agency has submitted the charge sheet, wherein the misappropriation amount has been reflected as Rs.1,26,927/-. As such, the Investigating Officer has come to a different finding than that of the Headmaster who initiated the case. The resolution of the Managing Committee from the School Authorities, was not collected by the Investigating Agency and is not part of the case Diary or the papers under Section 207 of the Code of Criminal Procedure.

Having regard to the totality of the circumstances as is reflected from the materials of the case, I am of the opinion that the issues which were raised are on foundation of facts and documents which were in custody of the accused persons. The stage presently is for consideration of charges and are not for conviction or acquittal.

No interference is called for in respect of the order dated 13.2.2018 passed by the Special Court, Tamluk Purba Mednipur thereby refusing to discharge the petitioners. However, the petitioners would be at liberty to present those documents in case of trial for the purpose of contradiction and corroboration.

So far as the order dated 13.2.2018 is concerned the same is not interfered with.

The revisional application being CRR 949 of 2018 is disposed of with the aforesaid directions

All pending connected applications, if any, are consequently disposed of.

Interim order, if any, is hereby vacated.

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

(Tirthankar Ghosh, J.)