

20.12. 2022
item No.22
n.b.
ct. no. 551

CRR 976 of 2018

With
IA No. CRAN 1 of 2018(Old No. CRAN 1997 of 2018)

Tarun Kanti De & Anr.
Vs.
The State of West Bengal & Anr.

Mr. Prasanta Kr. Banerjee,
Mr. Indrani Nandi
.....for the Petitioner
Mr. Bidyut Kumar Roy,
Ms. Sima Biswas
.... For the State.

Heard the learned advocate for the petitioner.

Learned advocate Mr. Avishek Sinha do not appear on
behalf of the State.

Mr. Bidyut Kr. Roy, learned advocate who usually appears
on behalf of the State is requested to appear in this matter and
represent the State. His appointment may be regularized by the
concerned authority.

Heard the matter at length from both sides.

The revisional application was preferred under Section
482 of the Code of Criminal procedure for quashing the proceeding
of C.R. Case No.753 of 2017 under Sections 506/34 IPC pending
before the learned Judicial Magistrate, 2nd Court, Durgapur.

Learned advocate for the petitioner submitted before this
Court that the complaint case pending before the learned
Magistrate was filed in ulterior motive. There are no sufficient

grounds for proceeding against the present petitioner in the said complaint case. He further pointed out that the dispute mentioned in the petition of complaint is civil in nature and it is barred by law. He further pointed out that the proceeding initiated by the Learned Magistrate is palpably illegal in the eye of law, so it requires to be quashed.

Learned advocate appearing on behalf of the State submitted before this Court that the learned Magistrate after receiving the complaint has adopted the procedure as laid down in the Code of Criminal Procedure. The S.A. has been conducted and the process has been issued. Therefore, he further pointed out that if any illegality committed, which is in the petition of complaint itself, can only be ascertained at the time of trial. So the criminal revisional application is liable to be dismissed.

Heard the learned advocates and perused the materials on record. On perusal of the petition of complaint, it appears that the present petitioner arrayed as an accused in the petition of complaint and it was mentioned in the petition of complaint that the accused/petitioner was holding the post of Secretary of the PETS Housing Co-operative Societies Avanindra Bithi City Centre, P.S. Durgapur.

According to the provisions of Section 10 of the West Bengal Co-operative Act 2006, every officer of a Co-operative Society have been deemed to be public servant within the meaning of Section 21 of the IPC.

Thus, it can be safely held that the present petitioner/accused of the complaint case was the public servant at

the time of initiation of complaint. Learned Magistrate is of clear view that the necessary sanction is required for initiation of criminal proceeding against the public servant under Section 197 of the Code of Criminal Procedure. But, I find no sanction was obtained before initiation of such complaint case. Thus, I find illegality in proceeding with this complaint case. The complaint case initiated and proceeding pending before the learned Magistrate is barred under Section 197 of the Code of Criminal Procedure. Hence, the instant revisional application got merit and is liable to be allowed.

Thus, the criminal revisional application is allowed.

The C.R. Case No.753 of 2017 under Sections 506/34 IPC pending before the learned Judicial Magistrate, 2nd Court, Durgapur is hereby quashed.

The accused person be released from their respective bail bonds.

Accordingly, CRR 976 of 2018 is disposed of.

Any order of stay passed by this Court during pendency of the revisional application is also vacated.

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

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

(Subhendu Samanta, J.)