

15.03.2022

Item No.67
Ct.No.34
dc.

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION**

C.R.R. 1205 of 2018

**Nirmal Kumar Das
versus
The State of West Bengal & Anr.**

In Re: An Application under Sections 397/401 of the Code of Criminal Procedure, 1973 filed in connection with G.R. Case No. 436 of 2012 arising out of Bhabanipur Police Station Case No. 89 of 2012 dated 21.02.2012 under Sections 409/34 of the Indian Penal Code.

Mr. Aniket Mitra,
Mr. Ananda Dulal Sarkar ... For the Petitioner.

Mr. Swapan Banerjee,
Mr. Suman De ... For the State.

Affidavit-of-service filed in Court today be kept on record.

Mr. Mitra, learned advocate appearing for the petitioner challenges the order dated 13.02.2018 passed by learned Special Court, Tamluk, Purba Medinipur in TR(409)OI/2015 arising out of G.R. Case No. 436 of 2012 (Bhabanipur Police Station Case No. 89 of 2012 dated 21.02.2012) under Sections 409/34 of the Indian Penal Code wherein the application for discharge under Section 239 of the Code of Criminal Procedure preferred at the instance of the petitioner was dismissed by the learned Special Court.

Learned advocate for the petitioner submits that the petitioner is a Branch Manager and against him no case of misappropriation has been made out and all the allegations are against the Secretary and the Teacher-in-Charge of the

said school. Learned advocate draws the attention of this Court to a particular document enclosed along with this revisional application which reflects number of persons who have received the amount. Learned advocate also draws the attention of this Court to the application under Section 239 of the Code of Criminal Procedure.

Mr. Banerjee, learned advocate appearing for the State produces the case diary and submits that in the present case under the garb of disbursing salary, additional cheque book was issued by the present petitioner being the Branch Manager in collusion with the Secretary and the Teacher-in-Charge of the said school.

I have perused the order dated 13.02.2018 passed by the learned Special Court wherein the learned court has specifically observed as follows :

“Whether other two accused were authorised person to operate the salary account and whether they were entitled to receive additional cheque book and expenses incurred by them were justified are questions of facts and that can be decided after recording entire evidence. If after recording evidence it is found that even after having knowledge that these accused persons were not authorized, the Br. Manager allowed them to operate account and issuing additional cheque assisted them to defalcated Govt. money he cannot be sealed by the protection being govt. servant because assisting anyone to misappropriate the Govt. money cannot come within the scope of public duty.”

I have considered the reasons so assigned by the learned Special Court and I do not find any illegality in the order so passed.

Mr. Mitra, learned advocate for the petitioner subsequently submitted that no sanction was obtained to prosecute the present petitioner and cognizance has been taken by the learned Special Court which is in derogation of the provisions of Section 197 of the Code of Criminal Procedure.

In view of the ratio decided by the Hon'ble Supreme Court in ***P. K. Pradhan Vs. State of Sikkim*** reported in **(2001) 6 SCC 704**, I am of the opinion that presently the allegation is of conspiracy along with Section 409 of the Indian Penal Code and the nature of allegation as such does not require sanction. However, if at an appropriate stage, the learned Special Court is of the opinion that sanction would be required, then it would be for the learned Special Court to pass necessary order at the appropriate stage.

The revisional application being CRR 1205 of 2018 is, thus, dismissed.

Interim order, if any, is hereby 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.

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

(Tirthankar Ghosh, J.)