Form J(2) **IN THE HIGH COURT AT CALCUTTA**
Criminal Revisional Jurisdiction
Appellate Side

Present :
The Hon'ble Justice Bibek Chaudhuri

C.R.R. 1583 of 2022

Saikat Goswami
Vs.
State of West Bengal & Anr.

For the petitioner : Mr. Sabir Ahmed, Adv.
Mr. Mujibar Ali Naskar, Adv.
Mr. Apan Saha, Adv.

For the State : Mr. Moyukh Mukherjee, Adv.

Heard on : 27.06.2022

Judgment On : 27.06.2022.

Bibek Chaudhuri, J.

On the basis of a written complaint dated 5th September, 2020 filed one Kishore Saha, Treasurer of one Mohunlal Club, affiliated to the Cricket Association of Bengal alleged, *inter alia*, that the Secretary of the Club namely Goutam Sur, since deceased, Assistant Secretary, Saikat Goswami and the complainant himself are the joint signatories operators of the bank account lying with the Central Bank of India in the name of the said Club. It is alleged that after the death of Goutam Sur, accused Saikat Goswami illegally forged the documents and withdrew huge sum of money from the account of the Club and converted the said sum amounting to Rs.15,00,000/- approximately for his own use. On the basis of the said complaint, Shyampukur Police Station Case No.141 of 2020 dated 7th September, 2020 was registered and on completion of investigation police submitted final report against Saikat Goswami, petitioner herein.

The de-facto complainant filed a petition under Section 173(8) of the Code of Criminal Procedure praying for further investigation of the case. The learned Additional Chief Metropolitan Magistrate-I, Calcutta by his order dated 12th August, 2021 accepted the F.R.T. but treated the said Narazi petition as the petition of complaint and fixed the date for examination of the de-facto complainant and witnesses under Section 200 of the Code of Criminal Procedure.

The petitioner has challenged the said order dated 12th August, 2021 passed by the learned Magistrate.

It is contended by Mr. Ahmed that petitioner was nominated by the Club as a representative of CAB. After his nomination he tendered resignation from the membership of the Club. He had no control over the accounts of the club. No signatory can alone withdraw the amount from the bank as per the memorandum of association. The Investigating Officer collected the bank report of the club and did not find any anomaly in the transaction. Therefore, the petitioner after examining the available witnesses under Section 161 of the Code of Criminal Procedure and on examining the documents collected during investigation, filed FRT.

It is also pointed out by Mr. Ahmed that the Investigating Officer seized bank account statements from Central Bank of India in respect of account of Mohunlal Club from 01.01.2020. The statement shows that from 01.01.2020 and the cheque period, the amount deposited in the account of the Club was less than 15 lacks. Prior to 01.01.2020, the petitioner resigned from the Club. Therefore, question of mis-appropriation of money does not arise at all. The learned Trial Judge rightly accepted the FRT but his order of treating the Nazari petition as petition of complaint is illegal and beyond jurisdiction.

Mr. Moyukh Mukherjee, learned Counsel for the private opposite party submits that Mohunlal Club has Executive Committee Members duly elected or nominated. During his regime Saikat Goswami set up a parallel Executive Committee. The Investigating Officer examined only those persons who belonged to the camp of the petitioner. The original club members were not examined. No documents were seized from the Treasurer/private opposite party of this case. Had those documents been seized, it could have asserted as to whether there was mis-appropriation of money or not.

Mr. Ahmed, learned Counsel for the petitioner states that the Trial Court correctly held that it is a civil dispute and he has placed the copy of the plaint filed by Mohunlal Club and its present Secretary against the petitioner and others.

I have carefully perused the copy of the plaint. The civil suit was filed praying for declaration as to whether the Committee constituted on the basis of election or nomination by the club members or the committee constituted by Saikat Goswami, are valid or not.

Here in this case, the de-facto complainant has come up with a specific allegation of criminal mis-appropriation of money by the petitioner during the period when he was at the helm of affairs of the club.

The objection petition filed by the private opposite party being the Treasurer of the Club was declared to be treated as petition of complaint. The petitioner will have the opportunity to contest the complaint. Therefore, I do not find any illegality or material irregularity in the impugned order and accordingly, the instant motion is summarily dismissed.

After the instant order being dictated, it is pointed out by Mr. Ahmed that the petitioner resides outside the jurisdiction of Shyampukur Police Station. Therefore, before taking cognizance under Section 200 of the Code of Criminal Procedure, the Magistrate ought to have obtained a report under Section 202 of the Code of Criminal Procedure.

On fact it is not disputed cognizance has already been taken on the basis of the objection petition as a complaint. Two witnesses have already been examined and summons have already been issued against the accused.

Under such circumstance, this Court is not in a position to apply Section 202 of the Code of Criminal Procedure. However, the learned Magistrate is at liberty to call for and verify any police report in respect of any document submitted by the complainant or the opposite party and on the basis of examination as to the authenticity of the documents, he shall conclude the trial of the case.

(Bibek Chaudhuri, J.)