

21-11-2022
Subha
Item no.21
Ct no.34

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction

CRR 1420 of 2021

Samir Sarkar
-versus-
The State of West Bengal & Anr.

Mr. Soumik Ganguli
Mr. Dilip Kumar Sadhu
....for the petitioner.

Mr. Amitava Ghosh
.....for the private opposite party.

Mr. Saryati Datta
.....for the State.

The present revisional application was preferred challenging the continuance of the proceedings relating to Dum Dum Police Station Case No. 151 of 2017 dated 18.02.2017 under Section 195A of the Indian Penal Code.

Learned advocate appearing for the petitioner challenged the same on the ground that the petitioner is being vindictively implicated in the present case at the instance of the de facto complainant.

Additionally, it has been submitted that the continuance of the aforesaid proceedings affects the official functions wherein the petitioner and the de facto complainant both are working. Further, the present proceedings were initiated according to the learned advocate in derogation of the provisions of law.

Mr. Amitava Ghosh, learned advocate appears for the private

opposite party and submits that the present proceedings were the outcome of the conduct of the present petitioner and if the petitioner allowed to go scot-free, he would exercise its dominancy and authority thereby preventing the de facto complainant to pursue the litigation before a court of law. According to the learned advocate, the present case is where the petitioner has already threatened the complainant.

Mr. Datta, learned advocate appearing for the State produces the case diary and submits that although the chargesheet has been submitted under Section 195A of the Indian Penal Cod, but the complainant and the witnesses have consistently stated that the petitioner has threatened the complainant for withdrawing the earlier case which was registered.

Mr. Soumik Ganguli, learned advocate appearing for the petitioner relied upon a decision of *State of Punjab –vs- Raj Singh & Anr., reported in (1998) 2 S C C 391*, wherein it has been held that the learned court did not have the authority to take cognizance of an offence as there is a bar under Section 195 of the Code of Criminal Procedure. In order to elaborate such a contention learned advocate has relied upon a decision of *Ganesh Adhikari –vs- State of West Bengal and Anr., reported in (2015) 1 C. CR. L. R 324*.

In the said judgement, a co-ordinate Bench of this court was pleased to hold the proceedings to be mis-conceived and vexatious.

Per contra, Mr. Datta, learned advocate appearing for the State has relied upon a decision of *Rahul Yadav – vs- State & Anr., reported in 2018 SCC OnLine Del 8271* wherein the Hon'ble Delhi High Court was pleased to refuse the quashing of the chargesheet which was filed

in connection with Section 195A of the Indian Penal Code along with other sections.

Learned advocate for the State has also relied upon a decision of *Subrata Biswas & Ors. –vs – the State of West Bengal & Anr.*, reported in *2016 SCC OnLine Cal 790* wherein a similar view was taken by a co-ordinate Bench of this court.

I have scrutinized the materials appearing in the case diary and I find that the present case was registered because the complainant was threatened to withdraw the earlier case registered as Dum Dum P. S. case No. **1187** dated **13.12.2016**.

Having regard to the factual foundation of the case for which the present case should have been registered in connection with P. S. Case No. 151 dated 18.02.2017, I am of the opinion that the police authorities have wrongly inserted the sections and under ordinary circumstances, the present case should have registered under Sections 195A/506 of the Indian Penal Code.

That being the scenario, no interference is called for by this court at this stage. The chargesheet which has been filed would be deemed a chargesheet under Sections 195A/506 of the Indian Penal Code. Till date, the learned Additional Chief Judicial Magistrate, Barrackpore or any court in seisin with the matter considers the applicability of those sections according to the materials available at the stage of consideration of the charges.

With the aforesaid observations, the present revisional application being CRR 1420 of 2021 is disposed of.

Pending applications, if any, are consequently disposed of.

All concerned parties are to act in terms of a copy of this order duly downloaded from the official website of this court.

[Tirthankar Ghosh, J]