

08.12.2022

Item No.31
Ct.No.34
dc.

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

C.R.R. 1479 of 2021

**Soumitra Kuila & Anr.
versus
The State of West Bengal & Anr.**

In Re: An Application under Section 482 of the Code of Criminal Procedure, 1973.

Mr. Debasish Roy,
Mr. Kaushik Chatterjee,
Mr. Tirthankar Dey,
Ms. Mouli Sarkar ... For the Petitioners.

Mr. Nguive Ahmed,
Ms. Faria Hossain,
Ms. Amita Gaur ... For the State.

Ms. Chandreyi Alam,
Mr. Subhajit Das ... For the Opposite Party No.2.

The investigating agency by its report under Section 173(2) of the Code of Criminal Procedure came to a finding that the allegation of cheating in connection with Asansol (South) Police Station Case No. 257 of 2021 dated 13.07.2021 could not be established against Soumitra Kuila, Bhaskar Chandra Sekhar Ojha, Sajal Mandal and Kalicharan. The Investigating Officer prayed for discharge of these persons from the case.

Mr. Roy, learned advocate appearing for the petitioners submits that the complainant was a defaulter and she has abused the provisions of law for implicating bank officers who financed the vehicle. The police authorities came to a finding that no materials have been collected in course of investigation. However, by way of invoking the provision under Section 173(8) of the Code of Criminal Procedure, the

complainant was successful in keeping the criminal proceedings pending pursuant to the direction passed by learned Chief Judicial Magistrate, Asansol.

Ms. Alam, learned advocate appearing for the opposite party no.2 submits that from time to time the financial institution and its officers have created circumstances and situation for demanding money and the complainant to the best of her efforts parted with such sum and there are materials to show that she even sold her land for paying the financier.

Ms. Hossain, learned advocate appearing for the State produces the case diary and submits that there are statements under Section 161 of the Code of Criminal Procedure. However, those relate to stage at which the investigating authorities submitted their report under Section 173(2) of the Code of Criminal Procedure.

There are umpteen decisions of the Hon'ble Supreme Court where vehicles have been repossessed and the financier and their officers have been falsely implicated in the case. There is no dispute regarding the same. The present is a case which is deviating from the regular allegations and it is allegation against the officers and not the financial institution. The basic allegation is against one accused viz. Soumitra Kuila who had accepted Rs.4,50,000/- outside the office of the financial institution. It has been alleged that the other persons have created circumstance including commitments being made that the vehicle would be returned once such an amount is paid. This part of the allegation was

never dealt with by the investigating agency while conducting the initial investigation. As such, I do not think that the order of further investigation passed by the learned Chief Judicial Magistrate, Asansol is required to be interfered with.

However, the petitioners before this Court are (1) Soumitra Kuila and (2) Chandra Shekhar Ojha. Having regard to the allegations made in the initial complaint and that investigation is being conducted on the same, I direct the investigating agency to continue with the investigation for eliciting truth so far as the petitioner no.1, Soumitra Kuila is concerned who happens to be an officer of the financial institution.

So far as the other officer viz. Chandra Shekhar Ojha, petitioner no.2 is concerned, primarily the allegations are vague against him. Accordingly, until and unless overwhelming materials are obtained against this particular petitioner no.2, the investigating agency is directed that they should not proceed against him. As such the proceeding against Chandra Shekhar Ojha is hereby quashed.

There is an interim order of stay. The said interim order is hereby vacated.

The police authorities/investigating authorities are directed to carry on further investigation regarding the allegations made by the complainant against the petitioner no.1, Soumitra Kuila and come to a logical conclusion within a reasonable period of time and file their report under Section 173 of the Code of Criminal Procedure before the learned Chief Judicial Magistrate, Asansol.

With the aforesaid observations, the revisional application being CRR 1479 of 2021 is partly allowed.

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.)