

17-06-2022
Subha
Item no. 32
Ct no.34

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
C.R.R 1666 of 2021

In the matter of : Amitava Dalui

.....Petitioner.

Mr. Ayan Basu
Mr. Sandip Kumar Mondal
Mr. Sumit Routh

.....for the petitioner.

Mr. Narayan Prasad Agarwala
Mrs. Subhasree Patel

.....for the State.

Mr. Ayan Basu, learned advocate appearing for the petitioner challenges the continuance of Falta Police Station Case No. 95 of 2021 dated 06.05.2021 under Sections 448/341/323/324/326/34 of the Indian Penal Code.

Learned advocate for the petitioner submits that the petitioner is a teacher and has been victimized because of being a sympathizer of an adverse political party.

Learned advocate for the petitioner has drawn the attention of this court to the five criminal cases with which the petitioner has been foisted by the Investigating Agency and drawn the attention of this court to the period of time during which such cases were registered against the petitioner.

Learned advocate for the petitioner has emphasized that the administration resorted to selective harassment of the petitioner and unnecessarily in stereotype FIRs, he has been falsely implicated. On the first count, the emphasis of the petitioner was for quashing of the proceedings in view of the manner of initiation and registration of the criminal case is concerned, as it has been submitted that this case has been registered with an ulterior motive for wrecking vengeance upon the petitioner.

Ultimately, learned advocate for the petitioner has also drawn the attention of this court to Section 219 of the Code of Criminal Procedure and submitted that the five cases which have been registered were in close proximity of time and as such the provisions are attracted so that at least three of the cases can be tried in a single trial.

Learned advocate for the petitioner has also drawn the attention of this court to the decision of *Arnab Manoranjan Goswami –vs- State of Maharashtra & Ors* reported in (2021) 2 SCC 427 for elaborating on the issue of selective harassment of the citizens. Paragraph 67 of the said judgement so relied upon is referred to as follows:-

67. “Human liberty is a precious constitutional value, which is undoubtedly subject to regulation by validly enacted legislation. As such, the citizen is subject to the edicts of criminal law and procedure. Section 482 recognizes the inherent power of the High Court to make such orders as are necessary to give effect to the provisions of Cr.PC ‘or prevent abuse of the process of any court or otherwise to secure the ends of justice’. Decisions of this Court require the High Courts, in exercising the jurisdiction entrusted to them under Section 482, to act with circumspection. In emphasising that the High Court must exercise this power with a sense of restraint, the decisions of this Court are founded on the basic principle that the due enforcement of criminal law should not be obstructed by the accused taking recourse to artifices and strategies. The public interest in ensuring the due investigation of crime is protected by ensuring that the inherent power of the High Court is exercised with caution. That indeed is one—and a significant – end of the spectrum. The other end of the spectrum is equally important: the recognition by Section 482 of the power inhering in the High Court to prevent the abuse of process or to secure the ends of justice is a valuable safeguard for protecting liberty. The Code of Criminal Procedure, 1898 was enacted by a legislature which was not subject to constitutional rights and limitation; yet it recognized the inherent power in Section 561-A. Post Independence, the recognition by Parliament of the inherent power of the High Court must be construed as an aid to preserve the constitutional value of liberty. The writ of liberty runs through the fabric of the Constitution. The need to ensure the fair investigation of crime is undoubtedly important in itself, because it protects at one level the rights of the victim and, at a more fundamental level, the societal interest in ensuring that crime is investigated and dealt with in accordance with law. On the other hand, the misuse of the criminal law is a matter of which the High Court and the lower courts in this country must be alive. In the present case, the High Court could not but have been cognizant of the specific ground which was raised before it by the appellant that he was being made a target as a part of a series of occurrences which have been taking place since April 2020. The specific case of the appellant is that he has been targeted because his opinions on his television channel are unpalatable to authority. Whether the appellant has established a case for quashing the FIR is something on which the High Court will take a final view when the proceedings are listed before it but we are clearly of the view that in failing to make even a prima facie evaluation of the F.I.R, the High Court abdicated its constitutional duty and function as a protector of liberty. Courts must be alive to the need to safeguard the public interest in ensuring that the due enforcement of criminal

law is not obstructed. The fair investigation of crime is an aid to it. Equally it is the duty of courts across the spectrum – the district judiciary, the High Courts and the Supreme Court – to ensure that the criminal law does not become a weapon for the selective harassment of citizens. Courts should be alive to both ends of the spectrum – the need to ensure the proper enforcement of criminal law on the one hand and the need, on the other, of ensuring that the law does not become a ruse for targeted harassment. Liberty across human eras is as tenuous as tenuous can be. Liberty survives by the vigilance of her citizens, on the cacophony of the media and in the dusty corridors of courts alive to the rule of (and not by) law. Yet, much too often, liberty is a casualty when one of these components is found wanting.”

Mr. Agarwala, learned advocate appearing on behalf of the State has drawn the attention of this court to the statement of the injured as well as the medical report and submitted that the proximity of the petitioner in respect of the offence cannot be ruled out as the injured himself has named the present petitioner and it could not be within the jurisdiction of the court to decide regarding the truth and falsity of the contents of the statement of the injured until by way of cross examination, the petitioner is able to rebut the evidence of the injured.

Additionally, the learned advocate for the State submits that the stage at which the petitioner approached this court with regard to canvassing the points without trial being conducted is illegal. The proposition of Section 219 of the Code of Criminal Procedure has also been opposed by the learned advocate for the State.

I have considered the submissions advanced by the learned advocate appearing for the petitioner and that of the State. It is a settled proposition of law that in a given case this court should rise to the occasion and exercise its power under Section 482 of the Code of Criminal Procedure. However, the factual circumstance of the case under those circumstances should have a foundation. The present case is not a fit case in view of the fact that the allegations amongst others includes a deadly weapon being used and the injury sustained. The injured in his statement before the police officer has named the group of persons. Whether the injured has divulged any exaggerated version is a disputed question of fact, which this court at this stage is not entitled to enter. The

same absolutely is the domain of the trial court to decide after the cross-examination is over.

So far as the applicability of Section 219 of the Code of Criminal Procedure is concerned, I find that although the petitioner has been foisted with the five criminal cases within a definite period of time which is obviously less than one year, but at the same time it is to be appreciated that each offence is distinct where the witnesses are different, the victim is different and naturally the cross examination is completely different. The charges which are to be framed by the learned trial court on the basis of evidence collected by the Investigating Agency being completely different, the single trial so proposed under Section 219 of the Code of Criminal Procedure will not be conducive in the interest of justice. Accordingly, such prayer of the petitioner is also denied.

The overall factual circumstances of the case do not appeal to the conscience of this court to interfere at this stage either for terminating the proceedings or for conducting a single trial. It has been informed that the trial court is yet to consider the charges, having regard to the same, I am of the opinion that in case an application under Section 239 of the Code of Criminal Procedure is preferred before the jurisdictional court, the court concerned would dispose of the same in accordance with law after hearing the parties.

With the aforesaid observations, the revisional application being CRR 1666 of 2021 is disposed of.

All pending applications, if any, in connection with the revisional application, are consequently disposed of.

Interim order, if any, is hereby vacated.

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]

