

05.05.2022

Sl. No. 55.

Mithun

Ct.No.42.

IA No: CRAN/2/2021

In

CRR 2126 of 2005

(Via Video Conference)

In the matter of : **Ranatosh Saha & Anr.**

...petitioners.

Mr. Aniket Mitra, Adv.

...for the petitioners.

Ms. Anasuya Sinha, Adv.

Mr. Pinak Kr. Mitra, Adv.

... for the State.

I have heard learned Advocates for the petitioners and the State respondent.

On the basis of a prosecution under Section 409 of the Indian Penal Code, learned Judge, Special Court at Raiganj, Uttar Dinajpur took cognizance of the offence against the petitioner. Against the said order of taking cognizance dated 19th May, 2005 passed by the Court below, in G.R. Case No.380/2002, the petitioners/accused persons have filed the instant Criminal Revision mainly alleging the following factual grounds:-

(A) The petitioners were the Assessment Inspector and Tax Collecting Sarkar of Kaliyaganj Municipality. They were responsible to collect municipal tax. It is alleged that during the period 1998-99, the

petitioners received municipal taxes from the assesses but did not deposit the said money with the cash department of the Municipality.

It is contended by the petitioners that at the relevant point of time there was some agitation going on in Kaliaganj Municipality followed by lock down. The Employees' Trade Unions were also involved in the dispute and the cash department of the Municipality was under lock and key. There was nobody to look after the cash department and there was no employee posted in cash department in the Municipality to receive tax collected by the petitioners in the cash department. Such stalement condition went on for a period of one year. Subsequently, an employee was appointed. He was given charge in the cash department and then the petitioners deposited the money collected by them towards payment of tax on 25th June, 2002. However, the Chairman of Kaliaganj Municipality lodged FIR against the petitioners on 1st July, 2002 without considering the facts and circumstances as well as the turmoil which went on for a considerable period of time resulting in a stalement condition of the said Municipality.

(B)The charge-sheet was submitted without obtaining sanction order for prosecution against the petitioners. Therefore, the learned Special Judge, Raiganj erred in taking cognizance of offence under Section 409 of the Indian Penal Code against the petitioners in the absence of any valid sanction.

Learned Advocate for the State opposite party submits that the initial point taken by the learned Advocate for the petitioners is a disputed question of fact to be decided during trial on the basis of evidence on record. Therefore, a Revisional Court cannot quash a proceeding on disputed question of fact. It is also submitted by the learned Advocate for the State that the question as to whether charge sheet was filed without obtaining formal order of sanction or not is also to be determined by the Trial Court on the basis of the evidence on record. If the prosecution fails to produce any sanction order and examine the sanctioning authority then the prosecution will suffer but at this stage, the Court cannot quash the entire proceeding holding the order of taking cognizance as bad in law.

I am of course in agreement with the learned Advocate for the State opposite party. There is no material on record before this Court to hold if the order of sanction was obtained by the Investigating Officer before submitting charge sheet or not or if the cognizance was taken by the Trial Court on

perusal of the entire materials on record. At the same time this Court is not unmindful to note that the order of sanction is the pre-condition to submitting prosecution report/charge sheet in a case punishable under Section 409 of the Indian Penal Code. Without the order of sanction a public servant cannot be prosecuted.

In view of the above discussion, the learned Trial Judge is directed to bring it in evidence the disputed question of fact as to whether sanction order was obtained prior to lodging prosecution or not and if it is found that there is no sanction order, the learned Trial Judge need not procrastinate the trial of the case because at the end of the day no fruitful purpose will be served. If it is found that there is no sanction order, the learned Trial Judge is at liberty to record appropriate order disposing of the criminal case. If, on the other hand, the sanction order is found in record, it is open for the learned Trial Court to examine all the witnesses named in the charge sheet and follow the procedure of contested disposal of a criminal case. With the above observations and directions, the instant criminal revision is **disposed of on contest.**

(**Bibek Chaudhuri, J.)**

