

29-08-2022
Subha
Item no.05
Ct no.34

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction

CRR 2585 of 2009

Debabrata Narayan Bagchi & Anr.
-versus-
State of West Bengal & Anr.

In Re : An application under Section 482 of the Code of Criminal Procedure.

Mr. Somopriya Chowdhury
Mr. Dipayan Dan

....for the petitioner.

Mr. Arijit Ganguly
Mrs. Sujata Das

....for the State.

The present revisional application has been preferred challenging the proceedings of G. R. Case No. 2080 of 2007 pending before the learned Additional Chief Judicial Magistrate, Baruipur under Sections 448/427 of the Indian Penal Code.

The genesis of the case relates to Sonarpur P. S. Case No. 662 of 2007 dated 21.12.2007. Record of this revisional application reflects that on completion of investigation, chargesheet was submitted by the Investigating Authorities. The said chargesheet incorporates seven witnesses which include five witnesses including the complainant and two police officers. The chargesheet also incorporates one seizure in respect of two ceiling fans. As earlier recorded, Mr. Chowdhury learned advocate appearing for the petitioners pointed out that the present case has been instituted mala fide and for wrecking vengeance upon the petitioners who happened

to be the landlord of the premises. Attention of this court was drawn in respect of another case being Sonarpur P. S. Case No. 374 of 2007 dated 25.07.2007 wherein the police authorities on completion of the investigation found the case to be false and as such initiated proceedings under Section 211 of the Indian Penal Code against the present complainant who also initiated the said case.

Subsequently, summons were issued by the learned Magistrate and the complainant appeared before the learned court on 17th December, 2017 when his bail prayer was allowed by the learned Additional Chief Judicial Magistrate, Baruipur. The present case was immediately instituted by way of a letter of complaint dated 20th December, 2007 to the Inspector-in-Charge, Sonarpur Police Station and consequently, the present case was registered for investigation on 21st December, 2007.

Mr. Arijit Ganguly, learned advocate appearing for the State has produced the case diary. As earlier stated, the chargesheet reflects the witnesses to be Ratnesh Chandra Gupta, Sudipta Saha, Kamal Kanti Roy, Uttam Mondal and Sanjoy Gupta. The materials in the case diary reflects that Sanjoy Gupta happens to be a friend of Ratnesh Chandra Gupta and is residing in and around the area within the jurisdiction of Barrabazar Police Station. The local witnesses being Sudipta Saha, Kamal Kanti Roy and Uttam Mondal in their statements under Section 161 of the Code of Criminal Procedure recorded by the police authorities did not support the prosecution case and the prosecution in spite of the same, relied upon such witness in the chargesheet for establishing their case.

No documents relating to the seizure as claimed by the complainant are also available.

Having regard to the materials collected by the Investigating Agency and relied upon for the purposes of continuation of the case, I am of the opinion that the police authorities have failed to make out a case for further proceedings. In addition to that, there is substantial force in the submission of Mr. Chowdhury, learned advocate appearing for the petitioners. He submits that the present case was initiated immediately after the complainant/opposite party was found to be at fault for filing a false case in connection with Sonarpur P. S. Case No. 374 of 2007 dated 25.07.2007.

Needless to state that the Hon'ble Supreme Court in *Rajeev Thapar & Ors. vs. Madan Lal Kapoor* reported in (2013) 3 SCC 330 it has been categorically held regarding the quality of materials which can be relied upon by a court of law while arriving at its conclusion. For the said purpose, paragraph 30 to 30.5 are set out as follows:-

“30. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashment raised by an accused by invoking the power vested in the High Court under Section 482 CrPC:

30.1. Step one: whether the material relied upon by the accused is sound, reasonable, and indubitable i.e. the material is of sterling and impeccable quality?

30.2. Step two: whether the material relied upon by the accused would rule out the assertions contained in the charges levelled against the accused i.e. the material is sufficient to reject and overrule the factual assertions contained in the complaint i.e. the material is such as would persuade a

reasonable person to dismiss and condemn the factual basis of the accusations as false?

30.3. *Step three: whether the material relied upon by the accused has not been refuted by the prosecution/complainant; and/or the material is such that it cannot be justifiably refuted by the prosecution/complainant?*

30.4. *Step four: whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?*

30.5. *If the answer to all the steps is in the affirmative, the judicial conscience of the High Court should persuade it to quash such criminal proceedings in exercise of power vested in it under Section 482 CrPC. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as proceedings arising therefrom) specially when it is clear that the same would not conclude in the conviction of the accused.”*

On an appreciation of the materials placed on record, the submissions advanced by the learned advocate for both the parties as well as the settled proposition of law as enunciated in *State of Haryana & Ors. vs Bhajan Lal & Ors.* reported in 1992 Supp(1) SCC 335, I am of the opinion that further continuation of the present proceedings would be an abuse of the process of law and is bound to cause miscarriage of justice.

Accordingly, all further proceedings of Sonarpur Police Station Case No. 662 of 2007 dated 21.12.2007 corresponding to G. R. Case No. 2080 of 2007 including all orders passed therein for taking cognizance of the offence pursuant to the chargesheet so filed is hereby quashed.

Consequently, the revisional application being CRR 2585 of 2009 is allowed.

Pending applications, if any, are consequently disposed of.

Interim order, if any, is hereby made absolute.

Case diary be returned to the learned advocate appearing for the State.

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]