

12-12-2022
Subha
Item 46
Ct no.34

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction

CRR 2282 of 2021

Sandip Ghosh
-versus-
The State of West Bengal & Anr.

In Re : An application under Section 482 read with Section 401 of the Code of Criminal Procedure.

Mr. Sandip Ghose
Mr. Debayan Ghosh
...for the petitioner.

Mr. Arijit Ganguly
Ms. Manisha Sharma
...for the State.

Mr. Goutam Dinda
Mr. Anindyasundar Chatterjee
...for the K.M.C.

The challenge in the present revisional application relate to the proceeding arising out of Beliaghata P. S. Case No. 88 of 2017 dated 10.04.2017, wherein the chargesheet was submitted by the Investigating Authorities under Section 401A of the K.M.C Act.

Learned advocate for the petitioner draws the attention of this court to the earlier judgement delivered by the learned Municipal Magistrate, 3rd Court, Calcutta in M/F No. 268 of 2014.

Learned advocate for the petitioner draws the attention of this court to the 1st paragraph of the said judgement dated 11th December, 2014(*State Vs. Sumit Ghosh and Sandip Ghosh*) which is set out as follows:-

“The recital of the prosecution case in short is that on the basis of complaint made by Assistant Engineer, (Civil), Building Department, Borough – III,

K.M.C on 22.07.2014, a case was started against accused Sumit Ghosh and Sandip Ghosh on account of making construction of additional 5th storey and partly 6th storey in premises No. 4A Hem Chandra Naskar Road, Ward No. 33, P.S. Beliaghata. According to K.M.C Engineer if this construction is allowed to stand then it may collapse on any date which may cause human causality or disruption of water supply, drainage and sewerage system and may also create hazards on road affecting traffic. After being entrusted to investigate into the matter, S.I, Pradip Kumar Dey started investigation and examined available witnesses and thereafter, submitted charge-sheet against the accused Sumit Ghosh U/S. 401A of K.M.C Act, 1980.”

Learned advocate thereafter draws the attention of this court to the judgement of the trial court which by its judgement dated 11.12.2014 was pleased to hold that the prosecution has failed to establish its case under Section 401A of the K.M.C Act, but has been able to prove the offence under Sections 392/610 of the Act.

By convicting the accused petitioner of such offence, learned court was pleased to sentence the accused petitioner for a fine of Rs.2500/- and in default of payment of fine directed to suffer simple imprisonment for a period of 15 days.

Learned advocate drew the attention of this court to the chargesheet which has been submitted in connection with Beliaghata P. S. case no. 88 of 2017 dated 10.04.2017. The relevant part of the F.I.R/chargesheet is set out as follows:-

“Sometimes before 16.07.2014 to till date FIR named accused persons being the persons responsible of premises no. 4A, Hem Chandra Naskar Road, Kolkata – 10, Ward No. 33, Borough- III, KMC engaged themselves in unauthorized construction and constructed a building up to 5th storey with RCC structure, stair, and lift upto 5th floor level and small RCC structure at rear portion of 6th story etc. at the aforesaid place deviating from sanction plan issued by the KMC Authority, which may endanger human life & property and may disrupt drainage, sewerage as well as traffic system.”

Mr. Dinda, learned advocate appearing for the K.M.C tries to substantiate the case of the prosecution stating that the earlier judgement could have been in respect of the same premises or the unauthorized construction but the present proceedings have been initiated after new construction on the said illegal/unauthorized construction commenced.

Mr. Arijit Ganguly, learned advocate appearing for the State supports the contentions advanced by Mr. Dinda, learned advocate.

I have perused the records of the case, particularly the allegations both in respect of the earlier case arising out of *Beliaghata P. S. Case No. 277 of 2014* and the present case being *Beliaghata P. S. Case no. 88 of 2017 dated 10.04.2017*.

On an analysis of the materials more particularly the chargesheet, I find that under serial no. 10, no documents have been relied upon and it has been written by the Investigating Officer as e-mail.

The continuance of the subsequent proceedings would be barred on the principle of test of sameness of the offence as pronounced in the case of **Babu Bhai -vs- State of Gujarat reported in (2010) 12 SCC 254**.

Accordingly, all further proceeding arising out of *Beliaghata P. S. Case No. 88 of 2017 dated 10.04.2017* including the chargesheet submitted and the order dated 20.02.2021 is hereby quashed.

Accordingly, the present revisional application being CRR 2282 of 2021 is allowed.

Pending applications, if any, are consequently disposed of.

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

[Tirthankar Ghosh, J]