

17.05. 2022
item No.1
n.b.
ct. no. 34

CRR 2615 of 2017
+
IA No. CRAN 13 of 2022

Sankar Biswas & Ors.
Vs.
State of West Bengal & Anr.

Mr. Ayan Bhattacharjee,
Mr. Sanjay Kumar Baid,
.....for the Petitioners

Mr. Madhusudan Sur,
Mr. Dipanka Paramanick,
.....for the State.

Mr. Amitabha Ghosh,
.... For the opposite party no.2

The present revisional application has been preferred challenging Madhyamgram Police Station case no.189 of 2017 dated April 11, 2017 under Sections 323/ 384/406/ 423/ 467/468/ 420/120B of the Indian Penal Code.

Mr. Bhattacharjee, learned advocate appearing for the petitioners submits that the allegations made in the application under Section 156(3) of the Code of Criminal Procedure prima facie, fails to make out any offence so far as the present petitioners are concerned. It has been submitted that a frustrated unsuccessful litigant before the Civil Court has approached the Criminal Court and the Criminal Investigation, which has commenced, is for the purposes of throttling the present petitioners. Additionally, it has also been submitted that the charges of cheating and forgery are not made out and if the mala fide investigation are allowed to

continue then the same is bound to cause abuse of the process of the Court.

Mr. Bhattacharjee, learned advocate further submits that the investigation commenced on an application under Section 156(3) of the Code of Criminal Procedure wherein the guidelines set out by the Hon'ble Supreme Court was not followed.

Mr. Ghosh, learned advocate appearing for the private opposite party opposes such contention and submits that civil case has nothing to do with the criminal case.

Learned advocate for the opposite party further submits that apart from the offences of forgery and cheating, it would be palpable that there are allegations regarding the withholding of personal property relating to the complainant which were being investigated into by the police authorities and at the relevant point of time, the petitioners being accused approached this court and obtained an interim order of stay, thereby, preventing the investigation of the case to continue for collection of relevant materials for arriving at a finding.

Mr. Sur, learned advocate appearing for the State produced the Case Diary and draws the attention of this Court to the statement of witness under Section 164 of the Code of Criminal Procedure.

Learned advocate for the State further submits that there were initial seizures and as the petitioners were occupying a dominant position, the investigation had to be slow although collection of material continued. The interim order passed by this

Court deterred the Investigating Agency to effectively collect the materials.

I have perused the Case Diary as also the materials which are appearing therein and the materials which have already been collected by the Investigating Agency which, prima facie, make out a case for investigation, whether the same would make out an offence after the investigation is concluded is absolutely at the end of the investigation to be analysed. The interference at this stage when the collection of materials are in progress is unwarranted. So far as the issue raised by Mr. Bhattacharjee, learned advocate regarding non-compliance of the Judgment of the Hon'ble Supreme Court in Priyanka Srivastava's case, I am of the opinion that the same would have no retrospective effect in the progress of the investigational proceedings as the same would result in denying the materials which have been collected by the Investigating Agency. After balancing the materials collected by the Investigating Agency and the non-filing of the affidavit which are for ascertainment of truth of allegations, I am of the opinion that the same is in the nature of curable irregularity. As stated above, the nature of the materials so collected do not call for any interference of this Court, as such, the revisional application being CRR 2615 of 2017 is dismissed.

All pending connected applications, if any, are consequently disposed of.

Interim order, if any, is hereby vacated with a direction that since the interim order was continuing since the year August, 2017 the Investigating Agency would carry on their investigation

including the factum of service of notice under Section 41A of the Code of Criminal procedure if required, effect search and seizure, but will not arrest the petitioners till June 28, 2022 within which time the petitioners are granted liberty to approach the Court of appropriate jurisdiction for exhausting their remedies available in law.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Tirthankar Ghosh, J.)