

IN THE HIGH COURT AT CALCUTTA
(CRIMINAL REVISIONAL JURISDICTION)

PRESENT:

THE HON'BLE JUSTICE SIDDHARTHA ROY CHOWDHURY

CRR 3209 of 2009

AMALENDU CHAKRABORTY & ORS.
VS.
THE STATE OF WEST BENGAL & ANR.

For the Petitioners : Mr. Biswajit Manna, Adv.
Mr. R. Ganguly, Adv.

For the Opposite Parties : Mr. Anwar Hossain, Adv.

Order dated : 18th November, 2022

Siddhartha Roy Chowdhury, J. (Oral):

1. By filing this application under Section 482 of the Cr.P.C. the petitioners are praying for quashment of proceeding being B.G.R. Case No. 3470 of 2006 arose out of Jadavpur P.S. Case No. 450/2006 dated 16.11.2006.
2. Briefly stated that the petition of complaint was filed by one Sri Dilip Kumar Nath, the opposite party no. 2 before the learned Chief Judicial Magistrate, Alipore, 24 Parganas (South) alleging inter alia that he is a member of High Court Mahila Karmachari-O-Sathider Samabaya Abasan Samity Ltd. So are the accused persons except Sri Samar Kumar Chatterjee, accused no. 5. The said society was formed sometime in 1986 where the complainant being one of the members of the society, was selected as advisor of the board in the first general meeting of the

society. After the dissolution of last board the secretary handed over all vouchers, documents to the present board as well as to the treasurer of the ex board in terms of the order of the then chairman. In 2004, statutory audit of the society was done by the auditors appointed by the Director of the Co-operative Audit, West Bengal and it appears that huge amount was suppressed and / or withdrawn by the members of the board precisely by accused nos. 1,2,3 & 8 on the plea that those were missing. The complainant thereafter came to know from the advocate, that the statutory audit of the society could not be completed by the auditors and special-audit report was given. According to the complainant Rs.7,72,887.59 could not be incorporated in the accounts placed before the statutory auditor and the said amount was misappropriated by the board. According to the complainant the accused persons on one hand misappropriated the huge amount by suppressing and / or withholding vouchers and on the other hand they started humiliating to the complainant. He was harassed mentally, tortured, made to suffer financial loss by those accused persons. He brought those facts to the notice of Inspector – in – Charge of Jadavpur P.S. police only recorded G.D. vide G.D. No. 1446 dated 15.11.2006 but did not register any F.I.R. Hence the petitioner decided to draw the attention of the learned Chief Judicial Magistrate, Alipur, by filing a petition of complaint under Section 156(3) of Cr.P.C.

3. Prayer was considered by learned trial Court and the petition of complaint was forwarded to the concerned police station under Section 156(3) of Cr.P.C. and Jadavpur P.S. Case No. 450 dated 16.11.2006 was registered. Police took up investigation which culminated into

submission of charge sheet under Sections 403/406/477A and 120(B) of the Indian Penal Code.

4. I have perused the materials available on record. From the attending facts of the case it is admitted that the accused persons as well as the complainant are the members of the co-operative housing society.
5. Section 21 of the West Bengal Societies Registration Act envisages every member of a society may be sued or prosecuted by the society for any loss or damage caused to the society or its property or anything done by him detrimental to the interest by the society. From the record I find that a complaint was filed before the learned Additional Chief Judicial Magistrate, Alipur under Section 156(3) by the Secretary of High Court Mahila Karmachari-O-Sathider Samabaya Abasan Samity Ltd against the present Opposite Party Dilip Kumar Nath prior to the proceeding initiated at the instance of O.P. No. 2.
6. Section 23 of the Act envisages the provision of investigation into the affairs of the society by the State Government if the circumstances suggest that business of the society is being conducted with the intent to defraud its creditors, members or any other person and Section 32 of the Act envisages no prosecution shall be instituted without previous sanction of the State Government for any offence under this Act except where the prosecution was initiated against any member of the society who can be sued or prosecuted as strangers.
7. While submitting charge sheet the investigating officer did not consider the provisions laid down under the West Bengal Societies Registration Act, therefore, in my humble opinion though the

investigating officer in his wisdom found that charge 'Have well being established.' The investigation ex facie appears to be perverse and it was made without taking into consideration the provisions of West Bengal Societies Registration Act and under the said act the opposite party no. 2 has no locus standi to initiate the proceeding in the capacity of a member that too without the previous sanction of the State Government. If the proceeding is allowed to remain in force, in my humble opinion it would be an abuse process of law resulting into miscarriage of justice. Therefore, invoking the provision of Section 482 of Code of Criminal Procedure, I am inclined to quash the charge sheet as well as the proceeding being B.G.R. Case No. 3470 /06 pending before the learned Chief Judicial Magistrate, Alipur which arose out of Jadavpur P.S. Case No. 450/06 dated 16.11.2006.

8. With these observations, the revisional application is disposed of.
9. The copy of the order be sent down to the learned Trial Court for information and necessary action.
10. The parties shall act upon the server copy duly downloaded from the official website of this Court.
11. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties, upon completion of requisite formalities.

(SIDDHARTHA ROY CHOWDHURY, J.)