

08.03.2022

Item No.11
Ct.No.34
dc.

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION**

**C.R.R. 2806 of 2019
with
CRAN 7 of 2022**

**Udayan Majumdar
versus
The State of West Bengal & Anr.**

In Re: An Application under Section 401 read with Section 482 of the Code of Criminal Procedure, 1973 filed for quashing of the proceedings in connection with Hare Street Police Station/D.D. Case No. 321 dated 27.05.2014 under Sections 409/201/120B of the Indian Penal Code read with Sections 13(1)(b) and 13(1)(c) of the Prevention of Corruption Act, 1988 pending before the learned Judge, 4th Special Court, Bankshall Court, Calcutta.

Mr. Biplab Mitra,
Mr. Indranil Nandi,
Mr. Sayak Konar ... For the Petitioner.

Mr. Madhusudan Sur,
Mr. Manoranjan Mahata ... For the State.

The present revisional application has been preferred challenging the proceedings arising out of Hare Street Police Station/D.D. Case No. 321 dated 27.05.2014 under Sections 409/201/120B of the Indian Penal Code read with Sections 13(1)(b) and 13(1)(c) of the Prevention of Corruption Act pending before the learned Judge, 4th Special Court, Calcutta.

Mr. Mitra, learned advocate appearing for the petitioner submits that the present case had a chequered history in view of the fact that the criminal investigation commenced after the State of West Bengal lost the case in the Division Bench as well as before the Hon'ble Supreme Court. Learned advocate submits that the petitioner for a limited period of

time was engaged as Controller of Examinations and on assessment of the allegations made in the charge-sheet, hardly there are any materials collected against him in relation to the offences which have been made the foundation of the criminal case, more particularly in respect of the successful candidates who were before the Hon'ble Division Bench as well as before the Hon'ble Supreme Court. According to the learned advocate, all the contentions advanced in the charge-sheet which have been made the foundation of the offences were agitated by the State before the Hon'ble Division Bench and the same were considered and dealt with and findings were arrived at. The present case is a belated plea of the State being unable to satisfy their own conduct and non-availability of the documents, which were the foundation of the FIR and a ploy of vendetta to exhibit victimization for the loss suffered in the litigation by the State of West Bengal. Additionally, the learned advocate for the petitioner has canvassed on the issue of sanction, as the petitioner at the relevant point of time happened to be the Controller of Examinations for a limited period. In support of his contention, Mr. Mitra relies upon the following judgments of the Hon'ble Supreme Court :

- (i) ***N.K. Ganguly Vs. Central Bureau of Investigation, New Delhi*** reported in ***(2016) 2 Supreme Court Cases 143***,
- (ii) ***Matajog Dobey Vs. H.C. Bhari*** reported in ***AIR 1956 SC 44*** and

(iii) **Central Bureau of Investigation, Hyderabad Vs. K. Narayana Rao** reported in **(2012) 9 Supreme Court Cases 512**.

By relying upon **N.K. Ganguly** (supra) and **Matajog Dobey** (supra), the learned advocate emphasized that a government employee is entitled to protection for the work done in discharge of his official duty and as such, the same having not been obtained in this case, it was not within the domain of the learned Special Court to take cognizance of the offences and proceed with the case. Attention of the Court has been drawn to paragraphs 35 and 37 of the judgment in **N.K. Ganguly** (supra) which are as follows :

“35. From a perusal of the case law referred to supra, it becomes clear that for the purpose of obtaining previous sanction from the appropriate Government under Section 197 CrPC, it is imperative that the alleged offence is committed in discharge of official duty by the accused. It is also important for the Court to examine the allegations contained in the final report against the appellants, to decide whether previous sanction is required to be obtained by the respondent from the appropriate Government before taking cognizance of the alleged offence by the learned Special Judge against the accused. In the instant case, since the allegations made against the appellants in the final report filed by the respondent that the alleged offences were committed by them in discharge of their official duty, therefore, it was essential for the learned Special Judge to correctly decide as to whether the previous sanction from the Central Government under Section 197 CrPC was required to be taken by the respondent, before taking cognizance and passing an order issuing summons to the appellants for their presence.”

“37. For the aforesaid reasons, we set aside the impugned judgment and order of the High Court dated 27-5-2013 passed in Prof. N.K. Ganguly v. CBI [Prof. N.K.

Ganguly v. CBI, 2013 SCC OnLine All 13774 : (2013) 6 All LJ 706] and order dated 7-10-2014 passed in Application No. 277KH of 2014 in Special Case No. 18 of 2012 and quash the proceedings taking cognizance and issuing summons to the appellants in Special Case No. 18 of 2012 by the Special Judge, Anti-Corruption (CBI), Ghaziabad, U.P. in absence of previous sanction obtained from the Central Government to prosecute the appellants as required under Section 197 CrPC. The appeals are allowed. All the applications are disposed of.”

Reference has been made to paragraphs 18 and 19 of **Matajog Dobey (supra)** which are as follows :

“18. There are two cases of this Court to which reference may be made here. In Shreekantiah Ramayya Munipalli v. The State of Bombay [(1955) 1 SCR 1177, 1186] , Bose, J. observes as follows: “Now it is obvious that if Section 197 of the Code of Criminal Procedure is construed too narrowly, it can never be applied, for of course, it is no part of an official's duty to commit an offence and never can be. But it is not the duty we have to examine so much as the act, because an official act can be performed in the discharge of official duty as well as in dereliction of it. The section has content and its language must be given meaning”. The question of previous sanction also arose in Amrik Singh v. State of Pepsu [(1955) 1 SCR 1302, 1307, 1308] . A fairly lengthy discussion of the authorities is followed up with this summary: “If the acts complained of are so integrally connected with the duties attaching to the office as to be inseparable from them, then sanction under Section 197(1) would be necessary; but if there was no necessary connection between them and the performance of those duties, the official status furnishing only the occasion or opportunity for the acts, then no sanction would be required.”

“19. The result of the foregoing discussion is this: There must be a reasonable connection between the act and the discharge of official duty; the act must bear such relation to the duty that the accused could lay a reasonable, but not a pretended

or fanciful claim, that he did it in the course of the performance of his duty.”

Learned advocate for the petitioner draws the attention of this Court to paragraphs 20, 22 and 24 of **Central Bureau of Investigation, Hyderabad Vs. K. Narayana Rao** (supra) which are as follows :

“20. We have already extracted the relevant allegations and the role of the respondent herein (A-6). The only allegation against the respondent is that he submitted false legal opinion to the Bank in respect of the housing loans in the capacity of a panel advocate and did not point out actual ownership of the properties. As rightly pointed out by Mr Venkataramani, learned Senior Counsel for the respondent, the respondent was not named in the FIR. The allegations in the FIR are that A-1 to A-4 conspired together and cheated Vijaya Bank, Narayanaguda, Hyderabad to the tune of Rs 1.27 crores. It is further seen that the offences alleged against A-1 to A-4 are the offences punishable under Sections 120-B, 419, 420, 467, 468 and 471 IPC and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988. It is not in dispute that the respondent is a practising advocate and according to Mr Venkataramani, he has experience in giving legal opinion and has conducted several cases for the banks including Vijaya Bank. As stated earlier, the only allegation against him is that he submitted false legal opinion about the genuineness of the properties in question. It is the definite stand of the respondent herein that he has rendered legal scrutiny reports in all the cases after perusing the documents submitted by the Bank. It is also his claim that rendition of legal opinion cannot be construed as an offence. He further pointed out that it is not possible for the panel advocate to investigate the genuineness of the documents and in the present case, he only perused the contents and concluded whether the title was conveyed through a document or not. It is also brought to our notice that LW 5 (listed witness), who is the Law Officer of Vijaya Bank, has given a statement regarding flaw in respect of title of several

properties. It is the claim of the respondent that in his statement, LW 5 has not even made a single comment as to the veracity of the legal opinion rendered by the respondent herein. In other words, it is the claim of the respondent that none of the witnesses have spoken to any overt act on his part or his involvement in the alleged conspiracy. The learned Senior Counsel for the respondent has also pointed out that out of 78 witnesses no one has made any relevant comment or statement about the alleged involvement of the respondent herein in the matter in question.”

“22. We have already mentioned that it is an admitted case of the prosecution that his name was not mentioned in the FIR. Only in the charge-sheet, the respondent has been shown as Accused 6 stating that he submitted false legal opinion to the Bank in respect of the housing loans in the capacity of a panel advocate and did not point out actual ownership of the properties in question.”

“24. The ingredients of the offence of criminal conspiracy are that there should be an agreement between the persons who are alleged to conspire and the said agreement should be for doing of an illegal act or for doing, by illegal means, an act which by itself may not be illegal. In other words, the essence of criminal conspiracy is an agreement to do an illegal act and such an agreement can be proved either by direct evidence or by circumstantial evidence or by both and in a matter of common experience that direct evidence to prove conspiracy is rarely available. Accordingly, the circumstances proved before and after the occurrence have to be considered to decide about the complicity of the accused. Even if some acts are proved to have been committed, it must be clear that they were so committed in pursuance of an agreement made between the accused persons who were parties to the alleged conspiracy. Inferences from such proved circumstances regarding the guilt may be drawn only when such circumstances are incapable of any other reasonable explanation. In other words, an offence of conspiracy cannot be deemed to have been established on mere suspicion and

surmises or inference which are not supported by cogent and acceptable evidence.”

According to the learned advocate for the petitioner, the Hon’ble Supreme Court in the aforesaid decision held that even if some of the acts are proved to have been committed there must be an agreement between the accused persons who were parties to the alleged conspiracy and the offences must have been committed pursuant to such agreement. Drawing the analogy from the said case, the learned advocate points out that in the present case, the prosecution by relying upon the documents under Section 207 of the Code of Criminal Procedure has failed to make out any case so far as the present petitioner is concerned and there are no documents to show that the petitioner has been a beneficiary of any farthing or any of the relations of the petitioner has received any employment in respect of the exercise made by the Department of Agriculture for employment relating to Lower Division Clerks.

Mr. Mitra submits that having regard to the materials so collected and available before the court, no case has been made out so far as the present petitioner is concerned and as such, the proceedings against him should be quashed.

Mr. Sur, learned advocate appearing for the State vehemently opposes the contentions of Mr. Mitra and submits that there are glaring materials and clinching evidence so far as this case is concerned. However, the foundation of the case is based on not making available materials of the concerned department for effectively conducting the litigations before the

courts. Learned advocate further adds that although in such perspective the case was initiated, but the case has reached a different complexion and the materials now available with the investigating agency, leaves no room for escape of the present petitioner.

I have perused the charge-sheet which has been relied upon by the petitioner and which was the basis of argument of the learned advocate appearing for the petitioner. I find from the charge-sheet certain materials which have been collected by the investigating agency are very serious. 34 candidates who have been successful are all relations of the employees of the Agriculture Department. Daughter of one of the accused viz., Kalyan Sur, stood first in the examination. The said Kalyan Sur was thickly connected with the process of examination. The investigating officer of the case had to search for records as most of the files were kept in places which ordinarily could not have been accessed by an ordinary official without the consent/knowledge of the persons who had the intention of hiding the records. One of the most serious allegations, which the investigating officer in course of investigation found out, is regarding the answer scripts which were available at Alipore Treasury Building. The investigating officer could on effective search, lay his hands on the answer scripts of 15 successful candidates and it was found that the answer scripts first of all had overwritten marks which mismatched. This is a serious allegation as in government job, a competent person has been deprived by manipulating the answer scripts which is primarily the

contention of the investigating officer and which is referred to as serial number 15 in the list of documents so relied upon by the investigating agency to prove its case. The learned advocate for the petitioner was repeatedly confronted over this issue as to whether the Hon'ble Division Bench and the Hon'ble Supreme Court had the occasion to deal with the aforesaid manipulated answer scripts which contained overwritten marks which were mismatching. Although the learned advocate for the petitioner tried with his best efforts to justify that this was not a very important issue, but to the best of the understanding of this Court as it reveals from the documents placed in this revisional application, the aforesaid issue of manipulated answer scripts was neither before the Hon'ble Division Bench nor before the Hon'ble Supreme Court which creates a separate cause of action.

At this stage when the Special Court is in seisin of the matter for consideration of charges, the primary issue is whether a case has been made out for continuation of trial or not. The materials which have been collected by the investigating officer primarily reveal that in the process of examination, the petitioner was for a considerable period of time in the helm of affairs and therefore his responsibility cannot be ignored. The successful candidates, their relations being in the department and the manipulated answer scripts are chain of circumstances which cannot be designed without the persons responsible for conducting examination are either facilitating them for doing the illegality or are adding them by illegal means as successful candidates.

So far as the merits of this case is concerned, this Court is of the opinion that *prima facie* the complicity of the petitioner cannot be brushed aside so far as the issue of sanction is concerned. The judgments referred to by the learned advocate for the petitioner are definitely issues on the authorities in the background of the facts which have been decided. In this case, the nature of allegations are such that it cannot by any stretch of imagination be held that an examination process has been corrupted and manipulated for ensuring success of targeted candidates who are relations of the department. The said act complained of cannot be by any stretch of imagination said to be in course of discharge of official duty.

The Hon'ble Supreme Court in the case of **P.K. Pradhan Vs. State of Sikkim represented by the Central Bureau of Investigation** reported in **(2001) 6 Supreme Court Cases 704** after referring to a catena of judgments in paragraph 15 observed as follows :

“15. Thus, from a conspectus of the aforesaid decisions, it will be clear that for claiming protection under Section 197 of the Code, it has to be shown by the accused that there is reasonable connection between the act complained of and the discharge of official duty. An official act can be performed in the discharge of official duty as well as in dereliction of it. For invoking protection under Section 197 of the Code, the acts of the accused complained of must be such that the same cannot be separated from the discharge of official duty, but if there was no reasonable connection between them and the performance of those duties, the official status furnishes only the occasion or opportunity for the acts, then no sanction would be required. If the case as put forward by the prosecution fails or the defence establishes that the act

purported to be done is in discharge of duty, the proceedings will have to be dropped. It is well settled that question of sanction under Section 197 of the Code can be raised any time after the cognizance; maybe immediately after cognizance or framing of charge or even at the time of conclusion of trial and after conviction as well. But there may be certain cases where it may not be possible to decide the question effectively without giving opportunity to the defence to establish that what he did was in discharge of official duty. In order to come to the conclusion whether claim of the accused that the act that he did was in course of the performance of his duty was a reasonable one and neither pretended nor fanciful, can be examined during the course of trial by giving opportunity to the defence to establish it. In such an eventuality, the question of sanction should be left open to be decided in the main judgment which may be delivered upon conclusion of the trial.”

In view of the observations made therein, the issue of sanction is open as the same can be obtained in course of the trial, if so required.

Having regard to the observations made above, I am of the opinion that there is no scope for interference in the proceedings pending before the learned Special Court, Calcutta arising out of Hare Street Police Station/D.D. Case No. 321 dated 27.05.2014.

Thus, the revisional application being CRR 2806 of 2019 is dismissed.

Interim order, if any, is hereby vacated.

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

The learned trial court is directed to frame charges and proceed with the trial by adhering to the provisions of Section 309 of the Code of Criminal Procedure.

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

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Tirthankar Ghosh, J.)