

14.03. 2022
item No.62
n.b.
ct. no. 34

CRR 3455 of 2016

**Kolkata Municipal Corporation
Vs.
The State of West Bengal & Anr.**

Mr. Anindya Sunder Chatterjee,
Mr. Goutam Dinda
.....for the Petitioner

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

Mr. Sandip Chakraborty,
Mr. Anindya Bose,
Mr. Diptendu Mondal
... for the opposite party no.2.

The present revisional application has been preferred at the instance of Kolkata Municipal Corporation represented by Chief Health and Medical Officer of the said statutory body challenging the complaint case no. AC-1828 of 2015 under Sections 34/416/425/464/506 of the Indian Penal Code which is pending before the Learned Chief Judicial Magistrate at Alipore, South 24-Parganas.

The learned Magistrate on perusal of petition of complaint and the examination of the complainant and witnesses were pleased issue process under Section 204 of the Code of Criminal Procedure against all the persons.

Learned advocate appearing for the Kolkata Municipal Corporation drawn the attention of this court two paragraphs nine

and ten of the petition of complaint along with the other general allegations made in respect of rest of the accused persons.

Mr. Chakraborty, learned advocate appearing for the opposite party no.2, resisted the contention made on behalf of the Kolkata Municipal Corporation and submitted that there are materials wherein complicity of the KMC authorities are prima facie established. He further submits this is palpable from the materials on record that the second birth certificate was forged certificate and K.M.C. authorities should not have acted in the manner as alleged in the petition of complaint. The relevant part of the petition of complaint which implicates the K.M.C. represented by the C.M.O.H. are set aside as follows:

“9. Be it stated that accused No.1 and 2 in collusion with accused N.3 swore and executed false affidavit before this Learned Court on basis of which he said accused made an application NO.10567 of 2012 and on said application order dated 14.12.2012 was passed by this Learned directing the accused No.4 to issue allege birth certificate in fictitious name.

10. That petitioner on 12.02.2014, lodged written complaint before K.M.C., accused No.4 which was duly received and thereafter on 15.02.2014, petitioner also lodged written complain before Tiljala Police Station enclosing the written complaint dated 12.02.2014 lodged before K.M.C. but none of them up till now has taken any step or remedial measure, hence this proceeding.”

The background of the case relates to matrimonial discord in respect of issuance of birth certificate at the instance of both the

father and the wife maternal grand father and grand mother. The rest of the accused persons happened to be the father in law, mother in law and wife of the complainant.

Having regard to the background of the dispute and the subject matter relating to issuance of birth certificate and the involvement of the K.M.C. authorities pursuant to the direction passed by the Executive Magistrate as well as other Judicial Authorities, I am of the opinion that the C.M.O.H. was acting in discharge of official duties and such discharge may be rightly done or incorrectly done but culpabilitis so far as criminal offence is concerned requires an assessment by the sanctioning authority. I am firmly of the opinion that no cognizance could have been taken against the C.M.O.H without a sanction from the appropriate authorities entitled to grant the same under Section 197 of the Code of Criminal Procedure.

That being the findings of this Court, I am of the opinion that so far as accused no.4 is concerned in the petition of complaint so filed before the Additional Chief Judicial Magistrate, Alipore in A.C Case No.1828 of 2015, the further continuance would be an abuse of the process without obtaining the sanction under Section 197 of the Cr.P.C.

Accordingly, the proceedings so far as accused no.4/petitioner is concerned, is hereby quashed.

The complainant will be at liberty to obtain sanction from the appropriate authority and thereafter proceed, if advised against the accused no.4/petitioner.

Thus, CRR 3455 of 2016 is allowed.

Interim order, if any, is made absolute.

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

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

(Tirthankar Ghosh, J.)