

IN THE HIGH COURT AT CALCUTTA

Criminal Revisional Jurisdiction

Present: - Hon'ble Mr. Justice Subhendu Samanta.

C.R.R. No. - 4217 of 2017

With

IA No. CRAN 2 of 2020

(Old No. CRAN 1079 of 2020)

-And-

IN THE MATTER OF

Nilmani Bhattacharya

Vs.

The State Of West Bengal & Anr.

**For the Petitioner : Mr. Atis Kumar Biswas, Adv.,
Mr. Prosenjit De, Adv.
Mr. Amit Sing, Adv.
Ms. Jyoti Agarwal, Adv.**

**For the State : Mr. Imran Ali, Adv.
Mr. Debjani Sahu, Adv.**

Judgment on : 26.09.2022

Subhendu Samanta, J.

The instant Criminal Revision has been preferred against Order dated 17.05.2017 passed by the Learned Judge, Special Court (1st Court) Hooghly

at Chinsurah in connection with special case No. 7 of 2015 arising out GR Case No 1902 of 2013 corresponding to Chinsurah P.S Case No. 366 of 2013 dated 18.11.2013 U/s 409/420/379 IPC.

A very short point is involved in the instant revisional application.

One application was filed by the present petitioner before the Chief Judicial Magistrate Hooghly u/s 156(3) of Cr.P.C. against the private OP No. 2 for alleged commission of offence U/s 409/420/323 of IPC.

Learned Magistrate after being satisfied forwarded the said application to I.O Chinsurah P.S. for causing investigation on treating the same as FIR. Accordingly the Police Case was started. The investigation of the police is ended in charge sheet vide charge sheet No. 238 of 2015 dated 15.05.2015 U/s 409/420/379 of IPC against the private OP No. 2.

The accused/OP No. 2 obtained the court bail and appeared before the Learned Special Court with an application for discharge from the offence alleged to have been committed U/s 409 of IPC with a ground that the accused is not a public servant. Learned Special Court on hearing Learned Advocate and the state passed the impugned Order with an opinion that case against the accused person/ OP No. 2 U/s 409 IPC is not tenable.

Hence this revision.

Learned Advocate for the petitioner submitted before this court that the private OP No. 2 was the previous secretary of **Hooghly Zilla Khadi 'O' Kutir Shilpa Pratisthan**. It is a Society, registered under the Society Registration Act and its activities are duly monitored by West Bengal Khadi and Village Industries Board. It has been alleged in the FIR that after the petitioner became the secretary of the Co-operative Society, it had been noticed that OP NO.2 had misappropriated the money of the Said Society. The investigation of the police also ended in charge sheet accusing the Private OP No. 2 regarding his involvement by the alleged offence.

Learned Advocate for the petitioner further argued that the opinion of the Learned Special Court in the impugned Order is palpably wrong in the eye of law.

According to the provisions of Section 10 of the West Bengal Co-operative Societies Act 2006, the officers Co-operative Societies are Public servant within the meaning of Section 21 of the IPC. He further argued that the impugned order passed by the Learned Special Court is suffered illegality and it is liable to be set aside.

Learned Advocate appearing on behalf of the State submitted that the **Hooghly Zilla Khadi 'O' Kutir Shilpa Pratisthan** is a Society registered under the Societies Registration Act. The society is governed under the Director Control of the State of West Bengal. The public money is involved for the day to day functioning of the society. Thus, the secretary of the society is no doubt a public servant. So, he argued the view of the Learned Special Court is not correct.

Heard, the Learned Advocated perused the impugned order also perused the petition of complaint. It has been stated in the petition of complaint that while private OP 2/ accused was acted as a secretary of **Hooghly Zilla Khadi 'O' Kutir Shilpa Pratisthan**, he had defalcated a huge amount of money of the said Co-operative Society. Charge sheet suggested, during the course of investigation several notices under Section 91 of Cr.P.C. were served by the investigating agency but the accused did not responded to any of the notices. The IO also served a notice upon the accused/OP No. 2 U/s 41 (A) of Cr.P.C.. But the Accused/ OP No. 2 also did not meet the IO.

Let me consider whether the OP NO. 2 i.e. the erstwhile secretary of a co-operative Society is actually public servant or not.

Section 10 of West Bengal Co-operative Societies Act of 2006 enumerated

10. Officers of co- operative Societies to be public servants.-

Every officer of a Co-operative society shall be deemed to be a public servant within the meaning of Section 21 of the Indian Penal Code, 1860 (45 of 1860)

Sub- Section (iv) of Sub section (47) West Bengal Co-operative Societies Act enumerated (47) “Officer” includes a chairman, Vice- chairman, secretary, joint secretary, assistant secretary, treasurer, director of a board and managing director, general manager, deputy general manager, assistant general manager, development officer, chief executive, deputy manager, assistant manager, field executive officer, and any other person appointed and authorised by the board to give direction relating to the affairs of the co- operative society and also includes a Government Officer appointed under section 33 and Special Officer appointed under section 36 or an administrator appointed by the State government or the Registrar Under section 34 to manage the affairs of the co- operative society;

So, from the statute itself the secretary of a registered co- operative society is an officer of the co- operative society and every officer of the co- operative society are public servant within the meaning of Section 21 of the IPC.

Hooghly Zilla Khadi ‘O’ Kutir Shilpa Pratisthan is a co-operative society registered under the society’s registration Act. The day to day functioning of the co-operative society is being regularly monitored by the State of West Bengal through the West Bengal Khadi and Village industries Board.

It further appears to me that public money is involved in the alleged commission of offence. Thus, the impugned order passed by the Learned Special Court, is palpably illegal and it need be set aside.

The impugned order dated 07.05.2010 passed by the Special Court, (1st Court) Hooghly; in special case no. 07 of 2015 is hereby set aside. There

are materials to frame charge against the private OP No. 2/accused under Section 409 IPC.

OP No. 2 /accused is not represented in spite of several notices.

Learned Chief Judicial Magistrate Hooghly is directed to notify the gist of the order to the accused immediately after receiving the same and transmit the case record along with the accused to the Learned Judge, Special Court (1st Court), Hooghly for framing of charge against the accused /OP No. 2 under Section 409 IPC.

Hence the instant Criminal revision along with connected CRAN application if any, is disposed of.

Order of stay if any, is also vacated.

Let a copy of this order be forwarded to the Learned Chief Judicial Magistrate as well as Learned Judge, Special Court (1st Court), Hooghly through Learned District Judge, Hooghly for its compliance.

(Subhendu Samanta, J.)