

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

C.R.R 452 of 2023

**Sudin Jha @ Sudhin Jha
Vs.
The State of West Bengal & Anr.**

For the Petitioner: Mr. Koustav Bagchi, Adv.,
Mr. Debayan Ghosh, Adv.,
Ms. Priti Kar, Adv.

For the State: Mr. Saswata Gopal Mukherjee, Ld. P.P.,
Mr. Madhusudan Sur, Adv.,
Mr. Manoranjan Mahata, Adv.

Heard on: 28.02.2023, 02 & 15.03.2023

Judgment on: 30.03.2023.

BIBEK CHAUDHURI, J. : –

1. The petitioner has been arraigned as an accused in connection with GR Case No.2443 of 2017 arising out of Duttapukar Police Station Case No.660 of 2017 dated 6th August, 2017 under Sections 384/468/471/419/420/120B/170 of the IPC and charge-sheet No.882 of 2021 dated 1st October, 2021 under Sections 417/419/420/468/471/120B of the IPC as well as supplementary charge-sheet No.882/A of 2021 dated 15th December, 2021 under Section 119/166/109/418/420/120B of the IPC presently pending before the learned Chief Judicial Magistrate at Barasat, North 24 Parganas.

2. By invoking inherent jurisdiction of this Court the petitioner has prayed for quashing of the charge-sheet and supplementary charge-sheet filed against him in connection with the above mentioned case.

3. The petitioner is an Inspector of Police attached to DEB, Cooch Behar. On the basis of a written complaint submitted by the opposite party No.2, Duttapukur P.S Case No.660 of 2017 dated 6th August, 2017 was registered against six accused persons. Subsequently, in the supplementary charge-sheet the petitioner has been booked as an accused in the above mentioned case.

4. It is alleged by the petitioner that the opposite party No.2 lodged a written complaint stating, inter alia, that sometimes in the month of January, 2017 he visited Khardah Police Station and met the present petitioner who was posted as Sub-inspector of Police in the said police station and complained of matrimonial dispute between his daughter Piu Singha Roy and her husband. The petitioner then referred to him to one Koushik Das @ Rajdeep Das @ Tapas Das describing him as an eminent Advocate of the High Court at Calcutta as well as the Supreme Court of India. Then the defacto complainant had met with said Koushik Das who introduced himself as a Public Prosecutor of the High Court at Calcutta in his official chamber. The defacto complainant had also met with other accused persons. The principal accused, namely, Koushik Das and his associates took Rs.62 lakhs both in cash and cheque from the defacto complainant on the pretext that the said Koushik Das would settle the matrimonial dispute of the daughter of the defacto complainant.

5. The petitioner has been implicated in the supplementary charge-sheet filed by the investigating agency under Sections 119/166/109/418/420/120B of the IPC. It is further stated by the petitioner that the opposite party No.2 also preferred a complaint case being C. Case No.475 of 2017 against the said Koushik Das @ Rajdeep Das @ Tapas Das. In course of trial the opposite party No.2/defacto complainant submitted his evidence on affidavit stating, inter alia, that he had friendly relationship with the said Koushik Das and he had given a loan and case settlement money amounting to Rs.62 lakhs to the said Koushik Das.

6. Therefore, it is contended by the petitioner that the defacto complainant paid a sum of Rs.62 lakhs to Koushik Das towards loan as he had friendly relationship with the said principal accused.

7. It is submitted by Mr. Koustav Bagchi, learned Advocate for the petitioner that even if the statement of the present petitioner as contained in the FIR is held to be correct then his role is confined to inform the defacto complainant that Koushik Das is an Advocate of the High Court and the Supreme Court and he would be able to settle the matrimonial dispute of his daughter. Apart from the above statement there is nothing in the complaint filed by the defacto complainant. The learned Advocate for the petitioner has raised a question as to why a police personnel can be implicated as an accused if he states the name of a person as an eminent Advocate of the High Court and the Supreme Court of India. It is further submitted by the learned Advocate for the petitioner that the

Investigating Officer failed to collect any evidence that there was some criminal conspiracy between the petitioner and the said principal accused Koushik Das or that the petitioner himself introduced Koushik Das with the defacto complainant or that any amount of money taken by the said Koushik Das or other accused persons was transmitted through the petitioner. Therefore, Mr. Bagchi submits that the ingredients of offence under Sections 119/166/109/418/420/120B of the IPC is clearly absent as against the present petitioner. Accordingly, the petitioner has prayed for quashment of the criminal proceeding instituted against him.

8. Learned P.P-in-Charge, on the other hand, has produced the case diary. From the case diary it is ascertained that the petitioner introduced the complainant to accused Koushik Das saying that he is an eminent Advocate. He also referred to the statement of the witnesses recorded under Section 161 of the Cr.P.C who corroborated that the petitioner referred the defacto complainant to Koushik Das. During investigation statement of the daughter of the defacto complainant and one Biplab Mukherjee were recorded. Both of them stated that the petitioner told the name of Koushik Das to the defacto complainant who would be able to settle the matrimonial dispute of his daughter.

9. I have carefully perused the case diary. It is found from the case diary that the petitioner introduced the defacto complainant with the principal accused Koushik Das and told that he is an eminent Advocate of Calcutta High Court and the Supreme Court and he would be able to settle the matrimonial dispute of the daughter of the defacto complainant.

Except this allegation, there is no other material against this petitioner in the case diary.

10. Section 119 is a penal provision committed by a public servant concealing design to commit offence which it is his duty to prevent. In the instant case the accused Koushik Das and his associates committed cheating by personation and misappropriated huge amount of money from the defacto complainant. There is absolutely no evidence that the petitioner had the knowledge that the principal accused and his associates would commit cheating by personation and induced the defacto complainant to part with huge amount of money. There is also no prima facie evidence that the petitioner being a public servant intended to cause injury to the defacto complainant disobeying the law. The materials from the case diary does not reflect any offence under Section 109 of the IPC. In order to prove abatement under Section 109 of IPC, it is incumbent upon the prosecution to prove that the petitioner instigates the defacto complainant to part with money, or they engaged with other accused persons in any conspiracy for inducing the defacto complainant to part with huge sum of money in favour of Koushik Das and others or that he intentionally aided, by any act or illegal omission, the doing of that act. There is absolutely no evidence collected by the prosecution in course of investigation to prove the ingredients of offence under Sections 119/166/109 of the IPC. The petitioner cannot be implicated in the offence under Section 418/420 of the IPC.

11. In view of the above discussion, I do not find any material against the petitioner so that he may be directed to face trial.

12. In view of the above discussion further proceedings in connection with GR Case No.2443 of 2017 be quashed.

13. The learned Chief Judicial Magistrate at Barasat is directed to discharge the petitioner from the case as there is no sufficient ground for proceeding against the petitioner.

14. The instant revision is, thus, allowed on contest.

(Bibek Chaudhuri, J.)