

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

**Present:**

**The Hon'ble Justice Ajay Kumar Gupta**

**C.R.R. 477 of 2017**  
**With**  
**CRAN 5/2020 (Old CRAN 1226/2020)**

**Samir Sarkar**  
**Versus**  
**The State of West Bengal & Anr.**

**For the Petitioner :** Mr. Satadru Lahiri, Adv.  
Mr. Safdar Azam, Adv.  
Mr. Jyotirmoy Talukdar, Adv.

**For the State :** Ms. Faria Hossain, Adv.  
Mr. Narayan Prasad Agarwala, Adv.  
Mr. Pratick Bose, Adv.

**Heard on :** 05.12.2023

**Judgment on :** 13.12.2023

**Ajay Kumar Gupta, J:**

**IMPUGNED ORDER UNDER CHALLENGED**

1. Petitioner/accused filed this application under Section 401 read with Section 482 of the Code of Criminal Procedure, 1973 feeling aggrieved by an order dated 21<sup>st</sup> December, 2016 passed by the Learned Metropolitan Magistrate, 4<sup>th</sup> Court, Calcutta in connection with Complaint Case No. C/31380/09 whereby the learned Magistrate framed charge against the petitioner/ accused for commission of an alleged offences punishable under Sections 193/199/200 of the Indian Penal Code, 1860.

**FACTS OF THE CASE:**

2. The brief fact of this case is relevant for disposal of the instant case as follows:

A written complaint has been filed before the Learned Chief Metropolitan Magistrate by the Registrar, Original Side, High Court at Calcutta under Section 195 read with Section 340 of the Cr.PC for commission of offences punishable under Sections 193/196/199/200 of the IPC against the present petitioner in

pursuant to direction passed in judgment and order dated 23<sup>rd</sup> March, 2009 by the Hon'ble Justice Pratap Kumar Ray and Hon'ble Justice S.K. Gupta in APO No. 146 of 2008 ( STP Ltd Vs. 1<sup>st</sup> Industrial Tribunal and Others) and in APO No. 331 of 2008 ( Samir Sarkar Vs. STP Limited and Others). The allegation against the petitioner is that he made a false statement on oath in connection with a proceeding under Section 17B of the Industrial Disputes Act, 1947 before the Hon'ble High Court relating to his termination by his employer. The statement made by the petitioner in the said affidavit that he was unemployed during termination period is completely false and he had made such statement to obtain some favourable order in his favour and further induced the Hon'ble Court to pass some interim relief in his favour and subsequently, it surfaced practice upon the Court of law.

**3.** Upon receipt of such written complaint, the learned Metropolitan Magistrate was pleased to take cognizance of the alleged offences against the petitioner/accused and issued summon for appearance for commission of alleged offences punishable under Sections 193/199/200 of the Indian Penal Code, 1860. Upon receipt of the said summon, petitioner appeared and obtained bail. Later, a date was fixed for framing of charge against the accused person. It is

the contention of the petitioner that without recording pre-evidence or evidence before charge and without following the procedure of trial of warrant case instituted other than a police report, the trial Court was pleased to frame charge against the petitioner/accused person for commission of offences punishable under Sections 193/199/200 of the IPC and fixed the next date for evidence on 23<sup>rd</sup> February, 2017. The petitioner, feeling aggrieved by an order for framing of charge without recording pre-charge evidence, filed this revisional application. The learned Metropolitan Magistrate should have followed warrant trial procedure as provided under Sections 244/245/246 of the Cr.P.C. and, thereafter, should have been framed charge against the petitioner/ accused person as such charge framed against the petitioner is liable to be set aside.

**SUBMISSION ON BEHALF OF THE PETITIONER:**

4. Mr. Lahiri, learned advocate appearing on behalf of the petitioner vehemently submitted that the Magistrate ought to have followed a warrant trial procedure as provided under Sections 244/245/246 of the CrPC mentioned in Chapter XIX before framing of charge but without recording pre-charge evidence or evidence before charge and without collecting prima facie materials, the learned Metropolitan Magistrate immediately framed the charge,

which is totally an abuse of process of law. To secure the end of justice, the impugned order dated 1<sup>st</sup> December, 2016 whereby framed charges against the petitioner for commission of offence punishable under Section 193/199/200 of the Indian Penal Code, 1860 is liable to be set aside.

5. The learned advocate relied upon a judgment of Hon'ble Supreme Court delivered in **Ajay Kumar Ghosh vs. State of Jharkhand and Another**<sup>1</sup> in support of his contention that the Learned Magistrate ought to have followed procedure like trial of warrant case instituted otherwise than on police report as provided under Sections 244, 245 and 246 of the Cr.PC and pre-charge evidence/evidence before charge should have been recorded by the Court of learned Metropolitan Magistrate. After recording of such evidence before charge/pre-charge evidence, if the learned Magistrate found and satisfied that there is sufficient evidence/materials against the present petitioner then only the Ld. Magistrate could have framed charge against the accused and start recording evidence of witnesses but in the instant case no such procedure has been followed by the learned Magistrate.

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<sup>1</sup> (2009) 14 SCC 115

**SUBMISSION ON BEHALF OF THE OPPOSITE PARTY NO. 2:**

6. No one appeared for the opposite party no. 2 on call.

**SUBMISSION ON BEHALF OF THE STATE:**

7. The learned Counsel appearing on behalf of the State submitted that the learned Metropolitan Magistrate rightly took cognizance and framed charge against the present petitioner/accused as the Learned Metropolitan Magistrate, Calcutta found sufficient materials against the accused person in written complaint and documents annexed thereto. The said written complaint was filed in pursuant to the direction of Division Bench of this Hon'ble High Court. Accordingly, the revisional application is liable to be dismissed.

**DISCUSSIONS AND ANALYSIS BY THIS COURT:**

8. Heard both sides extensively and on perusal of the record, it appears a written complaint has been filed before the learned Metropolitan Magistrate with an allegation that a false statement was made on oath by the petitioner in connection with a proceeding under Section 17B of the Industrial Disputes Act, 1947 before the Hon'ble High Court. The statement made by the petitioner in the said affidavit was that he was unemployed during termination period is completely

false and he had made such statement to obtain some favourable order in his favour and further induced the Hon'ble Court to pass some interim relief in his favour and subsequently, it surfaced practice upon the Court of law. The said complaint was registered as Complaint Case No. C/31380/09 thereby the learned Magistrate took cognizance and subsequently framed charge against the petitioner/accused for commission of an alleged offences punishable under Sections 193/199/200 of the Indian Penal Code, 1860. It is the contention of the petitioner that the Learned Magistrate should have recorded the pre-evidence charge like a trial of warrant case instituted otherwise than on police report as provided under Sections 244, 245 and 246 of the Cr.PC.

**9.** In view of the above arguments advanced by the parties, a relevant question emerges before this Court to decide as to whether the learned Magistrate ought to be followed procedure in a complaint filed under Section 195 read with Section 340 Cr.PC as a trial of warrant case instituted otherwise than on police report as provided under Sections 244, 245 and 246 of the Cr.PC and record pre-charge evidence prior to framing of charge.

**10.** Learned Counsel for the petitioner cited the aforesaid judgment to convince this Court that the Magistrate should have

followed procedure as trial of warrant case instituted otherwise than on police report as provided under Sections 244, 245 and 246 of the Cr.PC since the complaint was filed by the Registrar, Original Side, High Court at Calcutta. However, this Court does not convince with the judgment as referred by the petitioner. Petitioner would not get benefit or any relief by relying on such judgment because in **Ajay Kumar Ghosh's** Case an official of High Court filed complaint under Section 340 Cr.PC. In the said complaint, no any material annexed in the complaint to support the allegation. In the said case, accused appeared in pursuant to summon sent to him under Section 244 Cr.PC and filed an application for discharge and finally, the learned Metropolitan Magistrate dismissed the said application for discharge and framed charge against the accused. The Hon'ble Supreme Court in the aforesaid judgment observed that there was an absolutely nothing before the learned Metropolitan Magistrate beyond the complaint to consider the framing of charge and the learned Metropolitan Magistrate could have undoubtedly proceeded under Section 245(2) of the Cr.PC. According to Section 245(2) of the Cr.PC the Court could have discharged the accused even before any evidence was recorded. In the referred case pending before the learned Metropolitan Magistrate, the complaint was made by High Court. No other materials available before the learned Court of

Metropolitan Magistrate to frame charge. In such a situation, the Hon'ble Supreme Court allowed the case of the appellant and remanded back the case for recording the complainant's evidence.

**11.** In the instant case, the Registrar, Original Side, High Court at Calcutta filed a written complaint before the learned Magistrate under Section 195 read with Section 340 of Cr.PC in pursuant to the direction of Division Bench of this Hon'ble High Court. In the said complaint, the complainant also appended the documentary evidences as follows:

- i.** Photocopy of judgment and order dated 23<sup>rd</sup> March, 2009 passed by the Hon'ble Justice Pratap Kumar Ray and The Hon'ble Justice S.K. Gupta.
- ii.** Photocopy of the application under Section 17B of the Industrial Dispute Act, 1947 being G.A. No. 3991 of 2002 in W.P. No. 2098 of 2002.
- iii.** Photocopy of the report dated 12.03.2007 of Mr. Ayan Banerjee, Advocate, Special Officer.
- iv.** Photocopy of the deposition submitted by Mr. Ayan Banerjee, Advocate, Special Officer dated 6.3.2007.
- v.** Photocopy of supplementary affidavit affirmed by Shankar Chakraborty, Assistant General Manager of S.T.P. Limited on 19<sup>th</sup> June, 2007.

**12.** So, it is not the case where bare complaint was available before the Magistrate. There was sufficient materials as well as deposition recorded during enquiry, supplementary affidavit affirmed by Shankar Chakraborty, Assistant General Manager of S.T.P. Limited, deposition submitted by Mr. Ayan Banerjee, Advocate, Special Officer, copy of application under Section 17B of the Industrial Dispute Act, 1947 being G.A. No. 3991 of 2002 in W.P. No. 2098 of 2002 and the judgment and order dated 23<sup>rd</sup> March, 2009 were very much available with the written complaint before the Ld. Magistrate and those evidences are sufficient materials to take cognizance and to frame charge on the basis of materials available on record. The learned Magistrate read out the charge to the accused person and when he pleaded not guilty framed charge of offences punishable under Sections 193/199/200 of the Indian Penal Code, 1860 and fixed a next date for evidence. Moreover, in the referred case, the Hon'ble Supreme Court was not asked to consider if the warrant trial procedure is applicable to complaint cases filed under Section 195 read with Section 340 Cr.PC was to be followed in all cases, when a complaint is filed by the Court as the statute is specific. It is stated that a complaint sent to the Court under Section 340 Cr.PC shall, notwithstanding the procedure contained in Chapter

XV of the Cr.P.C has to be considered as a police report and the case has to proceed as if it were instituted on a police report.

**13.** In case of trial of warrant cases instituted otherwise than on police report, this Court would like to refer the procedure mentioned in Chapter XIX for better understanding. Those Sections are 244, 245 and 246, 247 and 248 which are as follows:

**244. Evidence for Prosecution.** - (1) When, in any warrant-case instituted otherwise than on a police report, the accused appears or is brought before a Magistrate, the Magistrate shall proceed to hear the prosecution and take all such evidence as may be produced in support of the prosecution.

(2) The Magistrate may, on the application of the prosecution, issue a summons to any of its witnesses directing him to attend or to produce any document or other thing.

**245. When accused shall be discharged.** - (1) If, upon taking all the evidence referred to in section 244, the Magistrate considers, for reasons to be recorded, that no case against the accused has been made out which, if

unrebutted, would warrant his conviction, the Magistrate shall discharge him.

(2) Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.

**246. Procedure where accused is not discharged. - (1)**

if, when such evidence has been taken, or at any previous stage of the case, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused.

(2) The charge shall then be read and explained to the accused, and he shall be asked whether he pleads guilty or has any defence to make.

(3) If the accused pleads guilty, the Magistrate shall record the plea, and may, in his discretion, convict him thereon.

(4) If the accused refuses to plead, or does not plead or claims to be tried or if the accused is not convicted under Sub-Section (3) he shall be required to state, at the commencement of the next hearing of the case or, if the Magistrate for reasons to be recorded in writing so thinks fit, forthwith whether he wishes to cross-examine any, and if so, which, of the witnesses for the prosecution whose evidence has been taken.

(5) If he says he does so wish, the witnesses named by him shall be recalled and, after cross-examination and re-examination (if any), they shall be discharged.

(6) The evidence of any remaining witnesses for the prosecution shall next be taken and after cross-examination and re-examination (if any), they shall also be discharged.

**247. Evidence for defence.-** The accused shall then be called upon to enter upon his defence and produce his evidence; and the provisions of section 243 shall apply to the case.

**248. Acquittal or conviction.** - (1) If, in any case under this Chapter in which a charge has been framed, the

Magistrate finds the accused not guilty, he shall record an order of acquittal.

(2) Where, in any case under this Chapter, the Magistrate finds the accused guilty, but does not proceed in accordance with the provisions of section 325 or section 360, he shall, after hearing the accused on the question of sentence, pass sentence upon him according to law.

(3) Where, in any case under this Chapter, a previous conviction is charged under the provisions of sub-section (7) of section 211 and the accused does not admit that he has been previously convicted as alleged in the charge, the Magistrate may, after he has convicted the said accused, take evidence in respect of the alleged previous conviction, and shall record a finding thereon:

Provided that no such charge shall be read out by the Magistrate nor shall the accused be asked to plead thereto nor shall the previous conviction be referred to by the prosecution or in any evidence adduced by it, unless and until the accused has been convicted under sub-section (2).

**14.** Whereas Chapter XXVI deals with offences affecting administration of justice. Offences which are mentioned in Section 195 are those offences committed by the accused persons or witnesses or litigants during pendency of trial or otherwise when the matter is pending before the Court and for that, the procedure to be followed in such cases under Section 340 of the Cr.P.C.

**15.** Section 340 reads as under:

**340. Procedure in cases mentioned in section 195.-**

(1) When, upon an application made to it in this behalf or otherwise, any Court is of opinion that it is expedient in the interests of justice that an inquiry should be made into any offence referred to in clause (b) of sub-section (1) of section 195, which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary,-

(a) record a finding to that effect;

(b) make a complaint thereof in writing;

(c) send it to a Magistrate of the first-class having jurisdiction;

(d) take sufficient security for the appearance of the accused before such Magistrate, or if the alleged offence is non- bailable and the Court thinks it necessary so to do, send the accused in custody to such Magistrate; and

(e) bind over any person to appear and give evidence before such Magistrate.

(2) .....

(3) .....

(4) .....

**16.** In the instant case also some preliminary enquiry had been conducted and when it is found the petitioner committed the offences before the Court, the Hon'ble Court directed the Registrar to file complaint before the jurisdictional Magistrate.

**17.** Section 343 of Cr. P.C. provides the procedure to be followed by a Magistrate to whom a complaint is made under Section 340 Cr. P.C.

Section 343 (1) of Cr. P.C. specifically provides that a complaint made to the Magistrate under Section 340 or 341 Cr. P.C shall, notwithstanding anything contained in Chapter XV (Chapter

dealing with complaint cases), proceed, as far as may be, is to be dealt with as if it was instituted on a police report.

**18.** Section 344 Cr. P.C. provides for following of a summary trial procedure for trial in cases of giving false evidence or had fabricated false evidence with intention that such evidence should be used in such proceeding by the same Court.

Under Section 344 of Cr. P.C, the trial court has option to follow summary trial procedure and convict the offender who commits an offence affecting administration of justice with punishment up to 3 months imprisonment, or to fine which may extend to five hundred rupees, or with both. It also provides that the Court, at its discretion, may make a complaint under Section 340 Cr. P.C.

**19.** Similarly, Section 345 Cr. P.C. prescribes procedure in cases where offences as prescribed in Section 175, 178, 179 & 180 of Cr. P.C. or in Section 228 of IPC (offences of acting administration of justice) is committed by a person in the view or presence of the Court. Under this provision a Court in whose presence the offence is committed can take cognizance of the offence and, after giving the offender a reasonable opportunity of showing cause why he should not be punished under this section, summarily sentence the person to a fine not exceeding Rs. 200/- and in default, simple imprisonment extending to one month can be awarded.

**20.** Section 346 Cr. P.C. provides that where procedure of summary trial as given under Section 345 Cr. P.C. is not followed and the court considers that punishment of fine of Rs. 200/- was not adequate, the Court may forward the case to Magistrate, having jurisdiction to try the same.

Section 346 (2) Cr. P.C. again emphasizes that the Magistrate to whom a case is forwarded under Section 346(1) Cr. P.C., shall proceed and deal with the case as if it was instituted on a police report.

**21.** Upon careful perusal of the aforesaid provisions, it is very clear with the intention of the legislature that either the offence against administration of justice should be tried summarily or by the complaint filed by the Court regarding such offence should be treated as police report. As statute is a clear mandate there should not be any doubt about the procedure which has to be followed by the Court below, when the complaint filed by the Registrar of the Hon'ble High Court has to be treated as a police report and the trial of the petitioner has to be conducted in the same manner as of a trial of warrant case as if it was instituted on a police report, as case is done by the Learned Metropolitan Magistrate.

**22.** Accordingly, this Court does not satisfy with the contention of the petitioner that the learned Metropolitan Magistrate has failed to follow the real provisions as enshrined in the Criminal Procedure Code and committed an error or an abuse of the process of law.

**23.** Accordingly, this Court does not find any scope to interfere with the order passed by the learned Metropolitan Magistrate, 4<sup>th</sup> Court, Calcutta in connection with Complaint Case No. C/31380/09.

**24.** Consequently, the revisional application being **CRR 477 of 2017** is dismissed without order as to costs.

**25.** In view of dismissal of this case, connected application being **CRAN 5/2020 (Old CRAN 1226/2020)** is also disposed of.

**26.** Interim order, if any, shall be vacated.

**27.** Let the copy of this judgment and order be sent to the learned Court below with a direction to proceed with the matter as expeditiously as possible in accordance with law and without granting unnecessary adjournment to the parties.

**28.** Parties shall act on the server copies of this order uploaded on the website of this Court.

**29.** Urgent photostat certified copy of this judgment, if applied for, is to be given as expeditiously to the parties on compliance of all formalities.

**(Ajay Kumar Gupta, J)**

**P. Adak (P.A.)**