

02-03-2023
Subha
Item no. 10
Ct no.34

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction

C.R.R 496 of 2021

Surendra Prasad & Ors.
-versus-
The State of West Bengal & Anr.

Re : An application under Section 482 of the Code of Criminal Procedure.

Mr. Sagar Saha
Mr. Partha Sarathi Das

...for the petitioners.

Mr. Swapan Banerjee
Mr. Suman De

.....for the State.

Mr. Saryati Datta

...for the High Court Legal Services Authority.

The present revisional application has been preferred challenging the proceedings relating to G. R. Case No. 92 of 2017 arising out of Sainthia GRPS Case No. 03 of 2017 dated 30.01.2017 under Sections 341/323/324/325/506/34 of the Indian Penal Code and Section 3 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

The petitioners happen to be the Railway Protection Force personnel and it is contended that they were performing their official duties.

The background of the case is that one Meheli Sain, a student of Biswabharti Sangeet Bhavan on 29.01.2017 complained before the Railway Security Helpline alleging that when she along with her classmates boarded the train in the ladies compartment of Burdawan-

Malda Passenger for going to Sainthia, she found large number of male passengers and when they were requested to leave the ladies compartment they started abusing her and her associates with filthy language. The said Meheli Sain informed through the Railway Security Helpline number being '182' seeking assistance and protection. On such information being received, the petitioner nos. 1 & 2, namely Surendra Prasad and Pappu Kumar Bharti proceeded to take steps at Ahmadpur Station. The petitioners being RPF personnel requested the male passengers to leave the ladies compartment but they refused to do so and the male passengers closed the doors of the ladies compartment and started quarreling. In the meantime, the train reached Bataspur Railway Station and three more RPF personnel being petitioner nos. 3 to 5 namely, Keshawa Kumar Sudhanshu, Jibal Chaudhary and Premjeet Kumar boarded the ladies compartment and with the help of other passengers the RPF personnel managed to vacate the male passengers from the ladies compartment in the next station at Sainthia.

The present case was initiated by one Lakhi Ram Baskey of Telipara, PS – Bamangola, Malda with the Officer-in-Charge, Malda GRPS alleging that on 28.01.2017 when he along with other supporters of Jharkhand Disom Party, Bamangola Block Committee attended a meeting at Dumka College Maidan, due to excessive load of passengers, they boarded ladies compartment to return to Malda on 29.01.2017 and when the train reached at Ahmadpur Railway Station two RPF personnel boarded the train, a scuffle took place between the RPF personnel and the members of the Jharkhand Disom Party and

when the train reached at Bataspur Railway Station other three RPF personnel entered the said ladies compartment and physically abused them with sharp cutting weapons and for that reason one of the members sustained injuries and as such a case should be registered. Consequently, Sainthia GRPS Case No. 3 of 2017 dated 30.01.2017 was registered for investigation and on conclusion of investigation, chargesheet was submitted under Sections 341/323/324/325/506/34 and Section 3 of SC/ST(POA) Act, 1989 with adding Section 3 (c)(r)(S)(u) & W(i) SC/ST(POA) Act, 1989.

I have considered the version of both the parties.

Mr. Sagar Saha, learned advocate appearing on behalf of the petitioners submits that the petitioners being RPF personnel were discharging their official duties and they have been falsely implicated in the instant case. As such, the proceedings should be quashed.

Mr. Saryati Datta, learned advocate appearing on behalf of the High Court Legal Services Authority relying upon the judgement of Kingsuk Biswas & Anr. –versus- State of West Bengal reported in 2022 SCC OnLine CAL 2528 submitted that whether sanction is required under Section 197 of the Code of Criminal Procedure or not is a question of fact which should be decided in course of the trial and at the very inception, the same cannot be a ground for termination of a proceeding.

Mr. Suman De, learned advocate appearing on behalf of the State submits that no sanction is required for prosecuting the RPF staff who exceeded their authority by injuring the victims.

Record of the case reflects that the prosecution sought for

sanction and the Senior Divisional Security Commissioner/RPF, Eastern Railway/Howrah while considering the case records of Sainthia P. S. case was of the opinion that on facts it has been established that the RPF staff against whom prosecution sanction was sought for were doing their lawful duty in the interest of administration and in compliance of lawful command and as such denied to grant sanction against the petitioners.

In order to arrive at such an opinion, the sanctioning authority relied upon the following factual circumstances which is set out as follows:-

1. *"Information received through 182 at SCNL/Howrah at 06:43 hrs. of 29.01.2017 from complainant Meheli Sain, Mob-9476349663, who was travelling in ladies compartment of Train no.53417 UP(Burdwan-Malda) Passenger, who was in distressed condition due to 25/30 male passengers are travelling in ladies compartment and was using slang languages and comments to the lady passengers. (Copy of the relevant documents are attached)*
2. *The information passed on to IPF/SNT at 06:45 hrs. on 29.01.2017 and also to SRP/CNL/HWH for immediate follow up action to save the modesty of lady passengers.(Copy attached)*
3. *Feedback received from the complainant as "satisfied". (Copy attached)*
4. *The complaint informed in her own handwriting about the incident of misbehaviour by the unauthorized male passengers boarded in the ladies compartment. Her statement is attached herewith.*
5. *Train guard during examination expressed his ignorance about the incident of any hot argument or tussles between RPF & unauthorized passengers entered in the ladies compartment and also informed that so many male passengers were boarded in the ladies compartment forcibly.(Copy of the statement is attached).*

In the light of above mentioned facts and evidences, it has been established that RPF staff against whom prosecution sanction is sought were doing their lawful duty in the interest of administration in compliance to lawful command. Hence, prosecution sanction is denied."

The fact remains that the allegation centers around the ladies compartment where certain male passengers were present. The complaint from both the sides do reveal that.

Having considered the fact that the prosecuting agency themselves applied for sanction and the sanction was denied by the sanctioning authority on evidentiary materials available before them, I am of the view that the circumstances which surface in the present case are completely different from that which was existing in *Kingsuk Biswas & Anr.(Supra)*.

This court is not entering into the merits of the matter as to whether the incident happened or not but having regard to the fact that the present petitioners being the RPF personnel were acting in discharge of their duty and sanction was applied for which was denied, there is no scope for continuation of the proceedings or cognizance being taken of the offence without the sanction being accorded by the appropriate authority.

Prosecution would be at liberty to challenge the said sanctioning order. For the time being further proceedings of Sainthia GRPS Case No. 3 of 2017 dated 30.01.2017 is quashed.

The prosecution or the affected party would be at liberty to challenge the order of sanction passed by the Sr. Divisional Security Commissioner/RPF, Eastern Railway/Howrah and thereafter only pursue with further proceedings of Sainthia GRPS Case No. 3 of 2017.

Accordingly, the revisional application being CRR 496 of 2021 is allowed.

Pending applications, if any, are consequently disposed of.

All concerned parties are to act in terms of a copy of this order duly downloaded from the official website of this court.

[Tirthankar Ghosh, J]