

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 947 of 2020

Abhisek Hazra

Vs

State of West Bengal & Anr.

For the Petitioner : Mr. Prasanta Kumar Banerjee,
Ms. Krishna Yadav,
Ms. Payel Ghosh.

For the State : None.

For the Opposite Party No. 2 : None.

Heard on : 09.06.2023

Judgment on : 26.06.2023

Shampa Dutt (Paul), J.:

1. The present revision has been preferred against the judgment dated 24.02.2020 passed by the Learned Additional Session Judge, 2nd Court, Hooghly in connection with Criminal Motion No. 95/2017 (CIS No. 95/2017) arising against order dated 16.08.2017 passed by the Learned Judicial Magistrate, 4th Court, Hooghly Sadar in connection with C.R. Case No. 56 of 2016.
2. The petitioner's case is that Asoke Hazra, who is the uncle of the petitioner made a complaint being Complaint No. 56 of 2016 against the petitioner under Sections 323/504/506 of Indian Penal Code before the Learned Chief Judicial Magistrate, Hooghly and the said C.R. Case No. 56 of 2016 was transferred to the Learned 4th Judicial Magistrate, Hooghly.
3. The Learned Magistrate, 4th Court, Hooghly after taking initial evidence under Section 202 of Criminal Procedure Code directed the Inspector-in-Charge, Chinsurah to inquire into the matter and submit a report and after considering the report of Inspector-in-Charge, Chinsurah, summon was issued against the accused under Sections 323/504/506 of the Indian Penal Code.
4. The petitioner appeared and filed an application under Section 11 of the Evidence Act on 31.12.2016 stating inter alia that on 08.02.2016 i.e. on the alleged date of incident, the accused was at Chandannagore College

from 11.20 A.M. to 4 P.M. for his examination and to that effect, the accused submitted **a certificate issued by Head of the Department, Computer Science Department, Chandannagore.** The said petition was heard on 10.08.2017 and 16.08.2017 respectively, when the Learned Trial Court after considering the facts and circumstances of the case, discharged the accused and dropped the proceedings against the accused person.

5. The Complainant, Asoke Hazra i.e. Opposite Party No. 2 herein being aggrieved and dis-satisfied with the Order dated 16.08.2017, discharging the accused and dropping the proceedings against the accused/Petitioner herein, filed a Criminal Motion before the Learned Additional District & Session Judge, 2nd Court, Hooghly Sadar being Criminal Motion No. 95 of 2017.
6. The Learned Additional Session Judge without applying his mind and without considering the facts and circumstances of the case allowed the criminal motion on contest and set aside the Order dated 16.08.2017 passed by the Learned Judicial Magistrate. 4th Court, Hooghly in C.R. Case No. 56 of 2016 and further directed the Petitioner to appear before the Learned Judicial Magistrate, 4th Court, Hooghly on 16.03.2020 to face the trial. The Learned Additional Session Judge, 2nd Court, Hooghly further directed the learned Magistrate to proceed with the trial of the case from the **stage of Section 251 of Criminal Procedure Code** and by taking evidence decide the plea of alibi taken by the accused.

7. **Mr. Prasanta Kumar Banerjee, learned counsel of the petitioner has submitted that the opposite party No. 2/complainant has expired.**
8. It is further submitted that the Learned Additional Session Judge, 2nd Court, Hooghly without applying his mind wrongly held that the Learned Magistrate accepted the **plea of alibi** of the accused without giving opportunity to the Complainant to challenge those documents and to disprove those documents. The Learned Additional Session Judge, 2nd Court, Hooghly also wrongly held that practical examination at Chandannagore College from 11A.M. to 4P.M. was held on 08.02.2016, but it appears from the petition of the Complainant that the incident took place on 08.02.2016 at 4P.M. so, the Learned Court wrongly held that just after leaving the College, the accused was involved in the incident as alleged by the Complainant and further held that the accused left the College just before 4 P.M. as his examination was till 4 P.M. So, the Learned Judge further held that it may have happened at any time before 4P.M. or after 4P.M. and can be determined after taking evidence of both the parties. So, the plea of alibi cannot be accepted only on the basis of certain documents.
9. The Learned Additional Session Judge, 2nd Court, Hooghly also wrongly held that the Learned Magistrate observed that no prima-facie case was found against the accused as he was not present at the place of occurrence by only accepting the plea of alibi.

10. It is submitted that the judgment and order as passed by the Learned Additional Session Judge on 24.02.2020 is thus bad in law and fit to be set aside/quashed.
11. **From the materials on record, the relevant portion of the order under revision is reproduced here:-**

“.....But in the present case the Ld. Magistrate discharged the accused only accepting the plea of alibi on the basis of certain document without considering any evidence that may adduce by the parties. Moreover, the plea of alibi is to be proved by proper evidence by the accused only filing some documents does not absorb the accused from the liability to prove his alibi. The document upon which the Ld. Court relied is a document issued by Principle Chandernagore College, but the original R.T.I. application has not been filed. Moreover, the document has not been proved as per law. So, it is the premature stage to accept the document on its face value and to discharge the accused without giving any opportunity to the complainant to prove his case specially when upon inquiry by a police, Ld. Magistrate issued the summons u/s 204 Cr.P.C.

In view of above discussion I am of considered view that Ld. Magistrate committed error in discharging the accused at the stage of 251 Cr.P.C. only on the plea of alibi without giving opportunity to the complainant to prove his charge specially when the document upon which plea of alibi is accepted has not been proved as per law. Accordingly, the order passed by the Ld. Court below should be interfered with.....”

12. In **Sakiri Vasu v. State of U.P., (2008) 2 SCC 409, 414, the Supreme Court in Appeal (Crl.) 1685 of 2007**, held on 7-12-2007 at para 18:-

“18. *It is well settled that when a power is given to an authority to do something it includes such incidental or implied powers which would ensure the proper doing of that thing. In other words, when any power is expressly granted by the statute, there is impliedly included in the grant, even without special mention, every power and every control the denial of which would render the grant*

itself ineffective. Thus, where an Act confers jurisdiction it impliedly also grants the power of doing all such acts or employ such means as are essentially necessary to its execution.”

13. In **Kesavananda Bharati Sripadagalvaru v. State of Kerala, (1973) 4 SCC 225**, **Ray, J.** pointed out that a word gets its “colour” in the context in which it is used. So, the purpose in which the accused is allowed to make defences under Section 251 Cr.P.C. is to empower the Judges to consider such defences and discharge the accused if prima facie case is not made out after considering those defences.
14. In **Sakiri Vasu (Supra)**, the Supreme Court held at para 20 that in ascertaining a necessary implication, the Court simply determines the legislative will and makes it effective. What is necessarily implied is as much part of the statute as if it were specifically written therein.
15. In **Bhushan Kumar & Anr. Vs State (NCT of Delhi) & Anr., Criminal Appeal No. 612 of 2012, on 4 April, 2012**, held:-

“17. It is inherent in Section 251 of the Code that when an accused appears before the trial Court pursuant to summons issued under Section 204 of the Code in a summons trial case, it is the bounden duty of the trial Court to carefully go through the allegations made in the charge sheet or complaint and consider the evidence to come to a conclusion whether or not, commission of any offence is disclosed and if the answer is in the affirmative, the Magistrate shall explain the substance of the accusation to the accused and ask him whether he pleads guilty otherwise, he is bound to discharge the accused as per Section 239 of the Code.”
16. In **Badshah v. Urmila Badshah Godse, (2014) 1 SCC 188**, the Supreme Court has laid down:-

“14. ... It is, therefore, respectfully submitted that ‘social context judging’ is essentially the application of equality jurisprudence as evolved by Parliament and the Supreme Court in myriad situations presented before courts where unequal parties are pitted in adversarial proceedings and where courts are called upon to dispense equal justice. Apart from the social-economic inequalities accentuating the disabilities of the poor in an unequal fight, the adversarial process itself operates to the disadvantage of the weaker party. In such a situation, the Judge has to be not only sensitive to the inequalities of parties involved but also positively inclined to the weaker party if the imbalance were not to result in miscarriage of justice. This result is achieved by what we call social context judging or social justice adjudication.

At para 18 it was stated that:-

“18. The court as the interpreter of law is supposed to supply omissions, correct uncertainties, and harmonise results with justice through a method of free decision — libre recherche scientifique i.e. “free scientific research”.”

17. In **Municipal Council, Raipur v. State of M.P., (1969) 2 SCC 582**, the Supreme Court upheld the discharge of an accused in summons case.

18. In **Kamala Rajaram v. D.Y.S.P. office of the SP (Rural), 2005 SCC OnLine Ker 302**, the Kerala High Court laid down that under these circumstances notwithstanding the dictum in **Adalat Prasad v. Rooplal Jindal, Supra Note 41**, held that:-

“.....Directing continuance of proceedings when allegations and materials collected do not justify such continuance will be the worst form of injustice.”

19. In **S.K. Bhalla vs State & Ors., CRL. M.C. No. 2727 of 2009, on 13 May, 2011**, the Delhi High Court held that:-

“14. The facts of this case are distinct from the facts of Adalat Prasad Case (supra). In Adalat Prasad case

(supra), learned Metropolitan Magistrate had recalled the summoning order by allowing the application under Section 203 CrPC after the issue of process under Section 204 CrPC. However, in the instant case, respondents No. 2 to 4 have been discharged by the learned Trial Court at the stage of serving of notice under Section 251 CrPC. At this subsequent stage, learned Metropolitan Magistrate was of the view that the charge sheet/complaint did not disclose necessary ingredient of the offence under Section 509 IPC, as such, he discharged the respondents No. 2 to 4 for the commission of abetment of offence under Section 509 IPC.

15. Section 251 of the Code of Criminal Procedure deals with the stage subsequent to issue of process under Section 204 CrPC in a summons trial case. This section casts a duty upon the Magistrate to state to the accused person the particulars of offence allegedly committed by him and ask him whether he pleads guilty. This can be done by the Magistrate only if the charge sheet/complaint/preliminary evidence recorded during enquiry disclose commission of a punishable offence. If the charge sheet/complaint does not make out a triable offence, how can a Magistrate state the particulars of non-existing offence for which the accused is to be tried. Therefore, it is inherent in Section 251 of the Code of Criminal Procedure that when an accused appears before the Trial Court pursuant to summons issued under Section 204 CrPC in a summons trial case, it is bounden duty of the Trial Court to carefully go through the allegations made in the charge sheet/complaint and consider the evidence to come to a conclusion whether or not, commission of any offence is disclosed and if the answer is in the affirmative, the Magistrate shall explain the substance of the accusation to the accused and ask him whether he pleads guilty, otherwise, he is bound to discharge the accused.”

20. In **Arvind Kejriwal v. Amit Sibal, 2014 SCC OnLine Del 212**, the

Court dealt with Section 251 CrPC., the Delhi High Court held:-

“10. It cannot be said that, in the above circumstances, courts have no power to do justice or redress a wrong merely because no express provision of the Code can be found to meet the requirements of a case. All courts, whether civil or criminal, possess, in the absence of

express provision in the Code for that purpose, as inherent in its very constitution, all such powers as are necessary to do the right and to undo a wrong in the course of the administration of justice. This is based on the principle, embodied in the maxim quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest — when the law gives a person anything, it gives him that, without which, it cannot exist. The High Court has, in addition thereto, and in view of its general jurisdiction over all the criminal courts subordinate to it, inherent power to give effect to any order of any such court under the Code, and to prevent the abuse of process of any such Court, or otherwise to secure the ends of justice.”

21. **The present case is under Section 323/504/506 of IPC.** Inquiry was also held under Section 202 Cr.P.C. by an Inspector of Police. The purpose of an inquiry under Section 202 Cr.P.C. is for the **purpose of deciding whether or not there is sufficient ground for proceeding. Thus in the present case the Magistrate also considered the inquiry report submitted by the police and also the other materials on record and passed the order discharging the accused/petitioner which is in accordance with law and needs no interference.**
22. **CRR 947 of 2020 is allowed.**
23. The order dated 24.02.2020 passed by the Ld. Additional Session Judge, 2nd Court, Hooghly in connection with Criminal Motion No. 95/2017 (CIS No. 95/2017) is hereby set aside and the order dated 16.08.2017 passed by the Learned Judicial Magistrate, 4th Court, Hooghly Sadar in connection with C.R. Case No. 56 of 2016, is hereby affirmed.
24. No order as to costs.
25. All connected applications, if any, stands disposed of.

26. Interim order, if any, stands vacated.
27. Copy of this judgment be sent to the learned Trial Court forthwith for necessary compliance.
28. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)