

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

Appellate Side

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 974 of 2019

Sanatan Maity

Vs.

The State of West Bengal & Anr.

For the Petitioner

: Mr. Prabir Kumar Mitra,
Ms. Subhanwita Ghosh.

For the State

: Mr. Madhusudan Sur,
Mr. Dipankar Paramanick.

Heard on

: 19.06.2023

Judgment on

: 11.07.2023

Shampa Dutt (Paul), J.:

1. The present revision has been preferred praying for quashing of the proceeding in connection with Chandipur Police Station Case No.329 dated 23.11.2015 under Sections 420/409/506 of the Indian Penal Code corresponding to G.R. Case No.3212/2015 and T.R. No.(409)-06/16 and all other orders and charge sheet and charge framed vide order dated 21.02.2019 against the petitioner in connection therein, now pending before the learned Judge, Special Court, Tamluk, Purba Medinipur.

2. The petitioner's case is that the petitioner is a retired school teacher and he retired as a Head Master of Bhagawan Khali Grade II primary School. The petitioner and his three brothers stay at Village-Gajipore, having their respective properties including household contiguous to each other.

3. The opposite party no.2 used to be a tenant of the petitioner's elder brother Bishnupada Maity.

4. The petitioner's youngest brother namely, Narayan Maity has been residing at Basudebpur under Durgachak Police Station, Haldia with his family.

5. The opposite party no.2 along with some other villagers had organised a village Shalish on 26.05.2013 in respect of the land the petitioner has bought from his younger brother Narayan Maity wherein the petitioner's elder brother Late Bisnupada's sons were also present and the petitioner was also a party to the Shalish. In the said Shalish the opposite party no.2 has represented in favour of the sons of Late Bisnupada Maity who are the rival group of the petitioner and which reflects the participation of the opposite party no.2 in the said Shalish.

6. The petitioner bought the land of his brother Narayan Maity through a registered Sale Deed and the said land has been mutated in favour of the petitioner in the record of B.L. & L.R.O.

7. The petitioner has converted the aforesaid land in the L.R. record, which was challenged by the opposite party no.2 as well as Gurupada Maity who is the nephew of the petitioner. But ultimately, the petitioner could retain the conversion in the L.R. Record.

8. In order to harass the petitioner, nephew of the petitioner had initiated a Complaint Case before the learned Chief Judicial Magistrate, Tamluk, Purba Medinipur at the instance of the opposite party no.2 wherein the opposite party no.2 appears to be the principle witness in the complaint which was registered as M.P. Case No.515/2013 dated 11.09.2013 and finally a police station case was started upon such complaint which was registered as Chandipur Police Station Case No.172/2013 dated 27.09.2013 under Sections 420/468/471/506/120B of the IPC.

9. After completion of investigation a Final Report in connection with the aforesaid case has been filed against the petitioner and other co-accused which was registered as FRMS No.91 of 2016 dated 31.10.2016.

10. Being dissatisfied with the said investigation report, a writ petition was moved by Gurupada Maity which was registered as W.P. No.16754 (W) of 2016 before this Hon'ble Court. Writ petition being W.P. No.16754 (W) of 2016 has been disposed of by this Hon'ble Court on 08.11.2016 directing the Officer-in-Charge of Chandipur Police Station to make available a copy of the Final Report to the petitioner therein i.e. Gouranga Maity.

11. That due to the continuous torture and misbehaviour, the petitioner has filed a complaint on 23.12.2013 before Chandipur Police Station against the son and wife of his elder brother Late Bishnupada Maity along with the opposite party no.2 which resulted in Chandipur Police Station case No.217 dated 23.12.2013 under Sections 447/323/325/307/379/34 of the Indian Penal Code.

12. It is submitted that the opposite party no.2 has always been trying to harass the petitioner. The opposite party no.2 has also filed a writ petition

against the petitioner before this Hon'ble Court as a Public Interest Litigation, inter alia, alleging that the petitioner has misappropriated a fund which was allocated for the development of the school building and prayed for an order for appropriate action against the petitioner along with some other prayers which was registered as W.P. No.21863(W) of 2014 and the said writ petition was disposed of by an order dated 11.08.2014 by the Hon'ble Chief Justice Manjula Chellur and the Hon'ble Justice A. K. Banerjee with a direction:-

“Order No. W.P. 21863(W) of 2014

Order dated 11.08.2014

..... In the light of allegations made in the writ petition and certain information brought to the notice of the District Project Director, Sarba Shiksha Mission, Purba Medinipur, we direct the respondent authorities to look into the complaint and do the needful in accordance with the procedure, if already not attended to the said complaint.....”

13. In connection with the said order in the writ petition, the office of Additional District Management (Development) vide Memo No.776/SSM dated **14.11.2014** intimated the learned lawyer of the opposite party no.2 that **after thorough enquiry by responsible officers, it has been found that the fund which was allotted for the construction of the School has been totally utilised.**

14. The opposite party no.2 finally lodged a complaint before the learned Chief Judicial Magistrate, Tamluk on **16.10.2015** with a prayer under Section 156(3) of the Code of Criminal Procedure, 1973 which was registered as M.P. Case No.1222/15 and it ultimately resulted in the present Police Station case being Chandipur Police Station case No.329/15 dated

23.11.2015 under Sections 420/409/506 of the Indian Penal Code, wherein it is alleged that:-

“The complainant is a law abiding peaceful man and he is the President of Safe Democracy of District Purba Medinipur. The accused person is a teacher of Grade II Bhagaban Khali Primary School and he is a cheat, fraud and dishonest person. The accused person while he was in service from 2010-2013, there was a sanction from Sarva Siksha Mission Department, East Midnapur in two instalments Rs.1,96,000/- and Rs.3,64,000/- respectively which the accused person had received.

It is stated that the accused person has not done the development work for which the money was allotted and he has submitted a fabricated account to the department of Sarva Siksha Mission. Afterwards the complainant along with some well wisher after collecting information had found that the accused person has misappropriated Government money. The complainant had intimated such act of the accused person to the officers of concerned department but no action has been taken against him.”

15. After completion of the investigation, charge sheet being no.62/16 dated 26.04.2016 under Sections 420/406/506 of the Indian Penal Code has been submitted against the petitioner.

16. The petitioner prayed for discharge from the aforesaid case but the learned Judge, Special Court, Tamluk had been pleased to frame charge on 21.02.2019 under Section 409 of the Indian Penal Code against the petitioner, but he remained silent in respect of the offences under Sections 420/506 of the Indian Penal Code although the charge sheet was submitted against the present petitioner under Sections 420/506 along with 409 of the Indian Penal Code.

17. **Mr. Prabir Kumar Mitra, learned counsel for the petitioner** has submitted that the series of private litigation by and between the opposite party no.2 and his associates with the present petitioner makes it

abundantly clear. The complainant in a spiteful manner to wreck vengeance, initiated the present proceeding.

18. The complaint does not constitute any offence as alleged.

19. That the continuation of the present proceeding is otherwise bad in law and liable to set aside.

20. **Mr. Madhusudan Sur, learned counsel for the State is present.**

21. **In spite of due service there is no representation on behalf of the opposite party no.2.**

22. **From the materials on record the following facts are before this Court:-**

I) The present case has been filed under Sections 420/409/506 of IPC.

II) Charge has been framed for offence punishable under Section 409 of IPC.

III) The allegations/facts on which charge was framed under Section 409 of IPC is that the petitioner, a teacher, while in service from 2010-2013, allegedly misappropriated the money sanctioned from Sarva Siksha Mission Department, for development work of the school.

IV) On the same allegations, the complainant had filed W.P. No. 21863(W) of 2014 and as directed by the court, an enquiry was held by the Additional District Magistrate (Development) vide memo No.776/SSM dated 14.11.2014, the Magistrate informed the lawyer of the complainant **that on field verification, it was found that the fund which was allotted for the construction of the school has been totally utilized.**

V) The present case has been filed on 23.11.2015, on the same allegations by the opposite party no. 2/complainant, describing himself as a President of Safe Democracy of the District.

VI) The dispute relates to family property, the opposite party no.2 acting on behalf of the petitioner's nephew.

VII) From the documents on record, it is seen that the petitioner was a member of the managing committee of the school and such decision were taken by the Managing Committee on behalf of the School. All formalities were duly complied with.

VIII) **The amount mentioned in the order framing charge is Rs.5,60,000/- in two installments.**

IX) **The amount mentioned in the order dated 11.08.2014 in W.P 21863(W) of 2014 is Rs.1,96,000/- and Rs.3,64,000/- total Rs.5,60,000/-.**

23. **Thus, from all these facts, it is clear that the complainant filed the present case on false allegations, in spite of the matter being duly enquired into as directed by the Hon'ble Court, by the appropriate authority, who clearly stated that the total fund had been utilized for the school.**

24. The investigating officer without conducting proper investigation filed the charge sheet which is clearly not in accordance with law.

25. The trial Judge framed the charge mainly on the basis of the submission made by the public prosecutor.

26. The Supreme Court in ***State of Maharashtra vs. Salman Salim Khan & Anr., in Appeal (crl.) 1508 of 2003, on 18 December, 2003***, held:-

“.....We are of the opinion that though it is open to a High Court entertaining a petition under Section 482 of the Code to quash charges framed by the trial court, same cannot be done by weighing the correctness or sufficiency of evidence. In a case praying for quashing of the charge, the principle to be adopted by the High Court should be that if the entire evidence produced by the prosecution is to be believed, would it constitute an offence or not. The truthfulness, the sufficiency and acceptability of the material produced at the time of framing of charge can be done only at the stage of trial.....”

27. In the present case, the entire evidence produced by the prosecution, clearly does not constitute an offence, more so not the offences alleged and also not the offence under Section 409 of the IPC in respect of which charge has been framed (***Salman Salim Khan,(Supra)***), when already the allegations as to the said charge has already been enquired into and decided in favour of the petitioner on a previous complaint by the complainant on the same allegation.

28. Thus, there is no materials against the petitioner to proceed towards trial.

29. On the said findings, the proceedings in connection with Chandipur Police Station Case No.329 dated 23.11.2015 under Sections 420/409/506 of the Indian Penal Code corresponding to G.R. Case No.3212/2015 and T.R. No.(409)-06/16 and all other orders and charge sheet and charge framed vide order dated 21.02.2019 against the petitioner in connection therein, now pending before the learned Judge, Special Court, Tamluk,

Purba Medinipur, including the charge framed being an abuse of process of law/court is quashed in the interest of justice.

30. **The revisional application being CRR 974 of 2019 is thus allowed.**

31. No order as to costs.

32. All connected applications stand disposed of.

33. Interim order, if any, stands vacated.

34. Copy of this judgment be sent to the learned Trial Court for necessary compliance.

35. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)