

IN THE HIGH COURT AT CALCUTTA
(Criminal Revisional Jurisdiction)
Appellate Side

Present:

Justice Bibhas Ranjan De

C.R.R. 1291 of 2016

IA NO: CRAN 1 of 2016 (Old No: CRAN 2414 of 2016)

Sankar Bera

Vs.

The State of West Bengal & Anr.

For the Petitioner

:Mr. Avirup Chatterjee, Adv.

Mr. Suryannel Das, Adv.

Mr. Aditya Mondal, Adv.

Mr. Chiranjit Pal, Adv.

For the opposite party nos. 2 & 3

:Mr. Sourav Chatterjee, Adv.

Mr. Aditya Tiwari, Adv.

For the State

:Mr. Binoy Panda, Adv.

Ms. Puspita Saha, Adv.

Heard on : 09.08.2023, 13.09.2023,
10.10.2023, 20.11.2023,
28.11.2023, 08.12.2023,

Judgment on : 19th December, 2023

Bibhas Ranjan De, J.

1. This is an application under Section 482 of the Code of Criminal Procedure (for short Cr.P.C) read with Article 227 of the Constitution of India challenging the order dated 19.01.2016 passed by Ld. Additional Chief Judicial Magistrate (for short ACJM), Contai, Purba Medinipur, rejecting an application moved on behalf of the petitioner for further investigation of the proceeding in connection with G.R. case 954 of 2015 arose out of Contai Police Station Case no. 239 of 2015 dated 13.06.2015 under Section 420/406/506/34 of the Indian Penal Code (for short IPC).
2. Initially petitioner lodged a written complaint before the Inspector in-charge Contain Police Station, Purba Medinipur where the complaint was registered as Contai Police Station case no. 213 of 2015 dated 13.06.2015 under Section

420/406/506/34 of IPC against opposite party no. 2 & 3 alleging, *inter alia*, that petitioner gave 11,50,000/- to the opposite party no. 2 & 3 for providing job of school teacher but neither the job was provided nor the money was refunded. During investigation few witnesses including complainant were examined under Section 161 of the Cr.PC without examining one Akash Mondal from whom complainant borrowed an amount of Rs. 2,00,000/- to give to the opposite party no. 2 and also Investigation Officer (for short I.O.) did not seize the cheque and other documents. Ultimately, the I.O. submitted charge sheet being no. 322/2015 dated 15.08.2015 under Section 420/406/506/34 of IPC against the opposite party no. 2 & 3 showing both of them absconding.

- 3.** Being aggrieved, petitioner filed an application before the Court of Ld. ACJM, Contai for further investigation for non-examination of vital witness and for non-seizure of vital documents. Ld. Magistrate disposed of that application on 19.01.2015 by recording the following order:-

“... The brief fact of this case is that the complainant had given money to the accused persons. But the accused persons did not refund the said amount and misappropriated the same. It is also contended by the de facto complainant that a cheque was issued in his favour which was false.

However, considering the evidence collected during the course of investigation the IO submitted charge sheet in this case. At this stage the de facto complainant filed the instant petition stating that some documents have not been collected by the IO. It is the settled proposition of law that if it appears to the prosecution that some documentary evidence are vital during the course of evidence there is a scope of filing a petition under Section 311 Cr.PC to avail the scope of adducing evidence. Accordingly the prayer of the de facto complainant is considered and rejected.”

4. Ld. Counsel, Mr. Avirup Chatterjee, appearing on behalf of the petitioner has contended in the line of revision application where it is alleged that the I.O. did not collect the relevant documents and failed to examine the vital witness of this case from who petitioner borrowed a sum of Rs. 2,00,000/- for satisfying opposite party no. 2 & 3 for providing job of school teacher. In support of his contention he relied on an unreported decision of the Hon’ble Apex Court in a Criminal Appeal No. 13 of 2013 (**Anant Thanur Karmuse Vs. The State of Maharashtra & ors.**)

5. In reply, Ld. Counsel, Mr. Sourav Chatterjee, appearing on behalf of the opposite party no. 2 & 3 has stated that after charge sheet was submitted the Trial Court framed charge against opposite party and the case has already been put into

trial by fixing date for recording of evidence. Mr. Chatterjee has submitted that at this stage of trial of a case for the year 2015 cannot be rewinded back to the stage of investigation. Mr. Chatterjee has further submitted that the facts of the case has relied on behalf of the petitioner is absolutely different from that of ours. Mr. Chatterjee further submitted that there is adequate scope for admitting the documents and examination of witness even during trial invoking the relevant provisions of Cr.PC.

- 6.** Mr. Chatterjee on behalf of the petitioner has alternatively submitted that necessary liberty may be given to the petitioner for placing those documents at the time of trial.
- 7.** Ld. Counsel, Mr. Binoy Panda, supported the argument advanced on behalf of the State.
- 8.** It is pertinent to mention here that the Court is abundantly empowered under Section 311 of Cr.PC to summon any person as a witness during trial even if that person was not examined by the I.O. under Section 161 of the Cr.PC if his evidence appears to the court to be essential to the just decision of the case.

- 9.** From the impugned order I find that Ld. Magistrate gave a liberty even to file application under Section 311 Cr.PC at the time of rejection of prayer for further investigation.
- 10.** Now I find it profitable to refer Section 165 of the Indian Evidence Act, 1872 (for short Evidence Act) whereby Ld. Magistrate is empowered to order the production of any documents even without giving any opportunity to the parties to raise any objection to such order.
- 11.** Therefore, lapses on the part of the IO, if there be any, can be rectified by the Ld. Judge/ Magistrate invoking section 311 of Cr.PC and section 165 of the Evidence Act. Therefore petitioner has got enough opportunity to bring the notice of the Ld. Magistrate with regard to lapses on the part of IO even at the stage of trial seeking remedy under the relevant provisions mentioned above.
- 12.** With the aforesaid observation the revision application being no. CRR 1291 of 2016 stands dismissed with the liberty to the petitioner to seek remedy before the Ld. Magistrate during trial.
- 13.** Interim order, if there be any, stands vacated.

- 14.** Pending applications, if there be any, stand disposed of accordingly.
- 15.** All parties to this revisional application shall act on the server copy of this order downloaded from the official website of this Court.
- 16.** Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]