

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
Appellate Side

Present:
The Hon'ble Justice Siddhartha Roy Chowdhury

CRR 1988 of 2012

Sri Parag Majumdar
Vs.
The State of West Bengal & Anr.

For the Petitioner : Mr. Sandipan Ganguly, Sr. Adv.
Mr. Arindam Sen
Mr. Saurav Basu
Mr. Anirban Guha Thakurata.

For the State : Ms. Anusyua Sinha.

For the O.P. No. 2 : Mr. Sanjib Chakraborty
Mr. Sunny Nandy
Mr. Tamal Singha Roy

Heard on : 27th March 2023

Judgment on : 27th March 2023

The Court:

This revisional application under Section 482 of the Code of Criminal Procedure challenges the legality of the proceeding being ACGR Case No. 2146 of 2011 arising out of Tiljala P.S. Case No. 414 dated 02.11.2011 alleging commission of offence within the meaning of Sections 143/447/379/506/323 of the Indian Penal Code.

Briefly stated, Sri Raju Sharma the authorized signatory of Dhanraksha Dealcom Private Limited and Urban Paribahan Service Private Limited set the criminal proceeding into motion by informing the Officer-in-Charge, Tiljala P.S. in writing that the companies Dhanraksha Dealcom Private Limited and Urban Paribahan Service Private Limited owned landed properties comprising within Dag No. 417 at Mouza – Madurdaha and in order to protect the said property the companies engaged security personnel. On 02.11.2011 at about 1 A.M. more than thirty persons conjointly trespassed into the said plot of land, introduced them as police personnel and thereafter looted a sum of Rs.50,000/- and belongings of the

said security personnel including mobile sets. They attacked the security personnel with lathi, iron rod etc. and assaulted them. They also threatened the security personnel with arms and open swords. Security personnel could identify Sri Ghanashyam Das Sharma, Nabaneet Krishna Sharma of 17, Dr. Sundari Mohan Avenue, P.S. –Entally, Kolkata – 14, Parag Majumdar and Bhola Das who led the mob while committing the offence of dacoity.

Having found disclosure of cognizable offence, Officer-in-Charge of Tiljala P.S. registered Tiljala P.S. Case No. 414 dated 02.11.2011. Police took up investigation against four accused namely, Parag Majumdar, Bhola Das, Sri Ghanashyam Das Sharma and Nabaneet Krishna Sharma under Sections 143/447/379/506/323 of the Indian Penal Code. The petitioner Parag Majumdar has been depicted as Parag Majumder in the written information and Parag Majnudar in the charge sheet. The application under consideration has challenged the aforesaid proceeding.

It is adverted that the informant is the authorized signatory of the companies who are the joint owners of Plot No. 417.

Mr. Ganguly, learned senior counsel representing the petitioner draws my attention to Annexure 'A' and submits that Parag Majumder was one of the directors of M/S. Leonine Abode Private Limited. He was appointed on 04.5.2009 and till the date of his resignation dated 01.10.2016 he was the director of the aforesaid company. It is further submitted by Mr. Ganguly, drawing my attention to the pages of photocopy of Title Deed, that plot No. 417 was purchased by the company M/S. Leonine Abode Private Limited along with other seventeen companies.

By no stretch of imagination, according to Mr. Ganguly, it can be said that being a director of one of the co-owner companies, Parag Majumdar could have committed offence within the meaning of Section 447 of the I.P.C.. It is further contended that in the F.I.R. a general and omnibus allegation was made regarding the commission of offence within the meaning of Section 378 of the Indian Penal Code without any detail as to from whose possession what was taken out without the consent of that person. Therefore, such general allegation regarding commission of theft of Rs.50,000/- and mobile phones etc. is not sufficient to implicate the petitioner for committing offence within the meaning of Section 378 of the Indian Penal Code.

There is a general statement that security guards were threatened with dire consequences. In absence of any recovery or any specific statement as to how the security personnel were criminally intimidated, there is no reason to hold that offence within the meaning of Section 503 has been committed by the petitioner. Police after investigation, submitted charge sheet citing three security personnel and the de facto complainant as witnesses. Since charge sheet has been submitted against four accused persons, by no stretch of imagination it can be said that an offence within the meaning of Section 141 of the Indian Penal Code has been committed. The security personnel Raju Das, Tilak Halder and Laltu Roy parroted each other by saying that;-

“More than thirty persons conjointly trespassed at above said land with lathi, iron rod and fire arms etc. and looted cash of Rs.50,000/- and mobile sets which was belonging with us and other security guards and also threatened us with dire consequence.”

According to Mr. Ganguly, the statement of those three security guards cannot be considered to be sufficient to even *prima facie* entangle the petitioner with criminal liability of committing offence of theft in absence of any indication as to the properties allegedly taken away by the miscreants and the ownership thereof. This general and omnibus statement does not satisfy the ingredients of offence within the meaning of Sections 378 / 503 of the Indian Penal Code.

Refuting such contentions, Mr. Chakraborty, learned counsel representing the opposite party no. 2 submits that when police after investigation has submitted charge sheet against four accused persons, offence within the meaning of Section 143 of the Indian Penal Code cannot be said to have been committed by the petitioner. But at the same time there is every reason to hold that police having found *prima facie* ingredient of offences submitted charge sheet against the petitioner along with three other accused persons. They should face the trial and according to Mr. Chakraborty, it is not a fit case to invoke the provision of Section 482 of Cr.P.C.. There is no room for this Court to re-appreciate the evidence collected in course of investigation. It should be left with the wisdom of the learned Trial Court and the petitioner should be asked to appear before the trial Court.

To buttress, his point, Mr. Chakraborty, learned counsel representing the opposite party no. 2 places his reliance upon the decision of Hon'ble Apex Court pronounced in the case of ***HMT Watches Limited vs. M.A. Abida and Another*** reported in ***(2015) 11 SCC 776 and Central Bureau of Investigation vs. Arvind Khanna*** reported in ***(2019) 10 SCC 686***.

Ms. Sinha, learned counsel appearing on behalf of the State submits that the statement made by the security personnel Raju Das, Tilak Halder and Laltu Ray lack the ingredient of offence within the meaning of Section of 379 of Indian Penal Code. There is no indication that the property was taken out from the possession of the aforesaid three so-called victims. Even after investigation police failed to indicate the property allegedly stolen from the custody of those three persons. According to Ms. Sinha, there was no recovery of alleged weapons used for the purpose of intimidating the security personnel coupled with absence of any whisper as to how those three persons were threatened, does not bring the case within the meaning of Section 506 of Indian Penal Code. Even there is no whisper that the accused persons caused hurt to those three security guards.

I have perused the judgement of the Hon'ble Apex Court relied upon by Mr. Chakraborty. There is hardly any room to differ with the settled principle of law that while exercising the jurisdiction of Section 482 of the Cr.P.C. there is no room to enter into the disputed questions of fact. But from the documents relied upon by the petitioner, which are public document *per se*, when it appears that petitioner was the director of one of the companies of that project comprising within plot No. 417 there is every reason to presume that the petitioner was representing a company that owns the property. Therefore, there is hardly any room to saddle the petitioner *prima facie* for committing offence within the meaning of Section 447 of the Indian Penal Code. Absence of any whisper as to the hurt caused to any of the security personnel rules out the possibility of commission of offence within the meaning of Section 323 of the Indian Penal Code.

Similarly, in absence of any statement by three of the security guards regarding the movable property dishonestly taken out of their possession, a general statement that a sum of Rs.50,000/- was looted along with mobile phone etc. in my

humble opinion does not bring the case within the ambit of Section 378 of the Indian Penal Code punishable under Section 379 of the I.P.C.

There is no whisper as to the nature of threat regarding causing injury to the person, reputation or the property of any of the three security guards, A general statement that they were threatened with dire consequences in absence of any recovery of fire arms, lathi etc with which the alleged miscreants came, does not make out a case within the meaning of Section 506 of the Indian Penal Code.

It is an equally settled principle of law that when the narrative disclosed in the F.I.R. does not constitute any offence within the meaning of penal code, it should be sufficient to invoke the provision of Section 482 of the Code of Criminal Procedure to avert abuse of process of law.

Here in this case we have the benefit of going through the charge sheet submitted after investigation.

Upon perusal of the statement made by three so-called victims, I do not find any ingredient of offence within the meaning of Sections 143/323/378/447/506 of the Indian Penal Code.

In the case of ***State of Haryana vs. Ch. Bhajan Lal & Others*** reported in ***1992 supp (1) SCC 335***, Hon'ble apex court held:-

"8.1. In the exercise of the extra-ordinary power under Article 226 or the inherent powers under Section 482 of the Code of Criminal Procedure, the following categories of cases are given by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guide- 7 3 myriad kinds of cases wherein such power should be exercised: (a) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused; (b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code; (c)

where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose 265 the commission of any offence and make out a case against the accused; (d) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code; (e) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused; (f) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party; (g) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

I consider it expedient to invoke the provision of Section 482 of the Cr.P.C. to avert the abuse of process of law.

The proceeding being the proceeding being ACGR Case No. 2146 of 2011 arising out of Tiljala P.S. Case No. 414 dated 02.11.2011 stands quashed qua the petitioner.

With this observation, the criminal revision is disposed of.

Liberty is given to the de facto complainant to register his objection before the learned Trial Court to the charge sheet submitted by the investigating agency by filing appropriate application which shall be considered by the learned Trial Court on merits.

Let a copy of the order be sent to the learned Trial Court for information and necessary action.

(Siddhartha Roy Chowdhury,J)

SB
Item No. 2