Form No. J(2)

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
Appellate Side

Present:
The Hon'ble Justice Siddhartha Roy Chowdhury

CRR 2416 of 2009
CRAN 5 of 2022

Samir Sinha & Anr.
Vs.
The State of West Bengal & Anr.

For the petitioner : Mr. Manwendra Singh Yadav, Adv.
Ms. Saswati Chatterjee, Adv.

For the State : Mr. Goutam Wilson, Adv.

Heard on : 29th March 2023

Judgment on : : 29th March 2023

The Court:

This application under Section 482 of Cr.P.C. is manifestation of displeasure of the petitioners over the proceeding being G.R. Case No. 1498 of 2008 corresponding to Kotwali P.S. Case No. 569 of 2008 dated 02.4.2008 pending before the learned Chief Judicial Magistrate, Jalpaiguri under Section 389 read with Section 34 of the Indian Penal Code including the order dated 21.7.2008 whereby learned Judicial Magistrate, was pleased to take cognizance upon receipt of the charge sheet filed by the Investigating Agency.

Briefly stated, petitioner no. 2 Manish Kumar, held an inspection over the petrol pump under the style M/s. Biswas Automobiles at Paharpur, Jalpaiguri on 25.3.2008 and detected some discrepancies namely, DSR was not maintained, Filter paper not available at the R.O., Delivery of xtramile unit was short by (40) ml. and calibration chart was not produced by the representative of the dealer. Such infirmities on the part of the dealer exposed him to the penal provision and the dealer was found liable to pay a sum of Rs.60,000/- for the aforesaid irregularities. Explanation was sought for from the dealer over the issue within seven days and it was attended by the dealer by letter dated 31.3.2008. On 2nd April 2008, Mr. Sanjib Biswas partner of M/s. Biswas Automobile set the criminal administration of justice into motion by informing the I/C, Kotwali, Jalpaiguri in writing that Manish Kumar the Sales Officer of the I.O.C. along with Samir Sinha, Senior Divisional Retail Manager of I.O.C. verified the records and documents of the pump sometime in the first week of January, 2008. Mr. Manish Kumar called the manager of the pump, Mr. Sujit Ghosh, and demanded money as bribe. Sujit Ghosh the partner of the firm in the dark in order to avoid continuous harassment agreed to pay a sum of Rs.5,000/- per month to Sri Manish Kumar. On 20.3.2008 Manish Kumar asked the Manager to enhance the bribe amount to which Mr. Ghosh expressed his inability. On 25.3.2008 in the morning at about 9 AM, Mr. Manish Kumar made a surprise visit at the R.O. and demanded papers and documents. When the staff of the firm wanted to contact the manager, Manish Kumar did not allow them to do so and without verifying any records and documents made those staff signed on some blank papers. The manager when came to know about such fact, made an attempt to contact sales officer but in vain. The partners of the pump tried to meet the sales officer and ultimately sent a reply vide registered post with A/D on 31.3.2008.

As the information disclosed offence cognizable in nature, I/C. Kotwali P.S. registered P.S. Case No. 569 of 2008 dated 02.4.2008 under Sections 385/384/389/406/120B/34 of the I.P.C. and took up investigation which culminated into submission of charge sheet under Section 389 of the Indian Penal Code.

Mr. Yadav, learned counsel representing the petitioners drawing my attention to the provision of Section 389 submits that alleged offence by no stretch of imagination can be said to have committed based on the allegation made by the de facto complainant.

Section 389 of the Indian Penal Code enunciates;-

"*389. Putting person in fear of accusation of offence, in order to commit extortion.—Whoever, in order to the committing of extortion, puts or attempts to put any person in fear of an accusation, against that person or any other, of having committed, or attempted to commit an offence punishable with death or with 1[imprisonment for life], or with imprisonment for a term which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and, if the offence be punishable under section 377 of this Code, may be punished with 1[imprisonment for life*."

Thus, from four corners of the written information as it appears, I do not find any ingredient of offence within the meaning of Section 389 of the Indian Penal Code. There is no allegation that the Manager or the person accompanying him was ever put under fear of any accusation or any attempt was made to commit an offence punishable with death or imprisonment for life or imprisonment upto the extend of ten years.

According to Mr. Yadav the de facto complainant did not make any whisper about the alleged demand of bribe or payment of any money to Mr. Kumar in reply dated 31.3.2008. The written information is nothing but an aftermath of the action taken on behalf of the I.O.C. limited against the dealer.

Refuting such contention, Mr. Wilson, learned counsel representing the State submits that in order to justify the invocation of provision of Section 482 of Cr.P.C. it is to be established that there was abuse of the process of law or the proceeding is a vexatious, frivolous act or oppression.

The conduct of the de facto complainant if considered from the point of view of human probability it would be sufficient to hold that the proceeding initiated by the police at the instance of Mr. Sanjib Biswas is attended with *mala fide*. Had there been any such demand of illegal gratification by a public servant in the month of January or February as alleged, Mr. Biswas, would have disclosed the said fact in the letter dated 31.3.2008 which he wrote in response to the letter issued by Manish Kumar on behalf of I.O.C. seeking application for utter irregularities detected by Mr. Kumar on the day of inspection i.e. on 25.3.2008. Mr. Biswas, the de facto complainant informed the police about the demand of illegal gratification after maintaining silence about such alleged demand in his letter dated 31.3.2008 which unerringly indicates his evil mind to harass the officers of I.O.C. and on that count this criminal proceeding appears to be vexatious, as it is being used as tool for oppression of officer of I.O.C. and leading to abuse of process of the Court.

Under such circumstances, I am inclined to invoke the provision of Section 482 of Cr.P.C. to quash the proceeding. Consequently the criminal revision is allowed.

The proceeding being G.R. Case No. 1498 of 2008 corresponding to Kotwali P.S. Case No. 569 of 2008 dated 02.4.2008 is quashed qua the petitioner.

With this observation, the criminal revision is disposed of along with application being CRAN 5 of 2022.

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. 9