

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

CRR 2522 of 2011
with
CRAN 2 of 2012 (CRAN 1383 of 2012)
(Assigned)

Subrata Das @ Subrata Kumar Das
Vs.
State of West Bengal & Anr.

Mr. Kunal Ganguly
Mr. Tirupati Mukherjee
... For the petitioner

Mr. Saswata Gopal Mukherjee, Ld. PP
Ms. Sreyashee Biswas
... For the State

This revisional application is filed challenging the Charge Sheet no.105 of 2010 dated 31st March, 2010 under Sections 379/461/462/403/323/341 of the Indian Penal Code arising out of GR Case No.1278 of 2009 in connection with Chinsurah Police Station Case No.297 of 2009 dated 5th December, 2009 pending before the learned Chief Judicial Magistrate, Hooghly.

The petitioner has filed this revisional application on the ground that the First Information Report in connection with this case was lodged by his father/private respondent no.2 for committing theft of articles from the house belonged to his father/private respondent no.2. The proceeding in connection with Charge Sheet no.105 of 2010 dated 31st March, 2010 was initiated at the instance of one Harekrishna Das, i.e., private opposite party against his son for committing theft of different articles kept in the house of the private opposite party, i.e., his father.

Learned advocate appearing on behalf of the petitioner has submitted that the First Information Report in connection with the Charge Sheet no.105 of 2010 dated 31st March, 2010 was lodged by the father of the petitioner as a counterblast of a case initiated by the petitioner against the private/opposite party no.2 and others in connection with Chinsurah Police Station Case No.175 of 2008 dated 31st July, 2008 under Sections 306/120B of the Indian Penal Code for unnatural death of the mother of the petitioner and in that case private opposite party was arrested and remained in custody.

Learned advocate appearing on behalf of the petitioner further refers to the order dated 5th May, 2009 in connection with WP 26107 (W) of 2008 wherein the Hon'ble Single Bench of this Court, on an application filed on behalf of the opposite party no.2/father, passed an order directing the police authorities to break open the padlock put up by the private respondents for facilitating the entry of the petitioner to the house.

Learned advocate appearing on behalf of the petitioner also refers to the order of the Hon'ble Division Bench of this Court wherein the order dated 5th May, 2009 passed in WP 26107 (W) of 2008 was challenged and in that case the Hon'ble Division Bench in MAT 1019 of 2009 with CAN 9030 of 2009 set aside the order passed by the Single Bench and the private opposite party no.2/father was directed to hand over the possession of the property to his son, i.e., the petitioner of this case.

Learned advocate appearing on behalf of the petitioner further refers to the Deed of Gift executed in favour of the petitioner

by his mother, since deceased, on 15th September, 2005. Relying on that Deed, Hon'ble Division Bench set aside the order of the Single Bench passed in WP 26107 (W) of 2008 and directed the private opposite party no.2/father to deliver the possession of the property to his son, i.e., the petitioner of this case. Thereby the learned advocate appearing on behalf of the petitioner submitted that the petitioner, being the owner of the property, cannot be said to be an accused of an offence of theft in respect of his own property.

Mr. Saswata Gopal Mukherjee, learned Public Prosecutor, appearing on behalf of the State refers to the statement recorded in the Case Diary and tries to make this Court understand that there are persons to witness the fact of taking away the articles from the house of private opposite party no.2. It is further submitted on behalf of the State that it is not denied by the petitioner that the private opposite party no.2 used to reside in the house. Therefore, the allegation of theft of articles cannot be ruled out at this stage in terms of the particular facts and circumstances of this case.

From the Case Diary, I do not find any recovery of any single alleged theft articles save and except statement of two witnesses (neighbours) who testified that the petitioner took away articles from the house. In view of the aforesaid discussion, I find that the Investigating Officer submitted charge sheet only on the statement of two witnesses and nothing was recovered during investigation and the charge sheet was filed under Section 379 of the Indian Penal Code.

After careful perusal of the entire materials on record including the order passed by the Hon'ble Division Bench of this Court in MAT 1019 of 2009 with CAN 9030 of 2009, I do not find any reason to disallow the prayer for quashing, otherwise it would be a glaring example of abuse of process of Court.

Thus, the proceedings in respect of Charge Sheet no.105 of 2010 dated 31st March, 2010 under Sections 379/461/462/403/323/341 of the Indian Penal Code arising out of GR Case No.1278 of 2009 in connection with Chinsurah Police Station Case No.297 of 2009 dated 5th December, 2009 pending before the learned Chief Judicial Magistrate, Hooghly, stands quashed.

The revisional application, being CRR 2522 of 2011, stands disposed of.

In view of disposal of the main revisional application, all connected applications are also disposed of.

Case Diary be returned to the learned advocate for the State.

All parties shall act on the server copies of this order duly downloaded from the official website of this Court.

Criminal Section is directed to supply certified copy of this order, if applied for, upon compliance of necessary formalities.

(Bibhas Ranjan De, J.)