

14-07-2023
Subha
Item no. 51
Ct no.34

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction

CRR 2528 of 2023

Ayush Dhanania & Anr.
-versus-
The State of West Bengal & Anr.

Re : An application under Section 482 read with Section 401 of the Code of Criminal Procedure.

Mr. Ayan Bhattacharjee
Mr. Anand Keshari
....for the petitioners.

Mr. Sourav Chatterjee
Mr. Arindam Guha
Mr. Satadru Lahiri
Mr. Sanjay Banerjee
Mr. Joydeep Bhattacharjee
Mr. Arpita Dey
....for the O.P.No.2.

Mr. Ranabir Roychowdhury
Mr. Mainak Gupta
....for the State.

Since all the parties who are affected in respect of the FIR which has been registered from the very first date participated in the proceedings, the revisional application is deemed to be admitted and copies of the same are deemed to be supplied to the parties on the first day. If the same has not been done till date, Mr. Bhattacharjee, learned advocate undertakes that the same would be done in due course.

The present revisional application has been preferred challenging the continuance of Sankrail P. S. Case No. 500 of 2023

dated 30.06.2023.

Mr. Ranabir Roy Chowdhury, learned advocate appearing for the State today has produced the case diary and draws the attention of this court to the statement of the witnesses including certain seized documents under Section 91 of the Code of Criminal Procedure.

The present petitioners were implicated in connection with another case at the instance of the complainant/opposite party.

Mr. Bhattacharjee, learned advocate appearing for the petitioners submits that there is a mala fide in the present FIR as immediately after the order of the Hon'ble Supreme Court was passed granting protection to them, a part of the transaction in the earlier complaint was segregated given a different colour and immediately a letter of complaint was filed for registration of FIR and the same was with the object of pinning down the petitioners as the complainant has failed to achieve his objective of harassing otherwise the petitioners who are in no way involved and are innocent of the allegations made against them.

Additionally, it has been submitted that the present FIR at all should not have been registered as the factual foundation of the case is simply continuation of the earlier FIR which was registered.

Mr. Chatterjee, learned advocate appearing for the complainant/private opposite party has raised serious objection to the contentions advanced by Mr. Bhattacharjee, learned advocate for the petitioners and he has stated that the present transaction had nothing to do with the subject-matter of the Sankrail P.S. Case

No.1144 of 2022. Learned advocate repeatedly drew the attention of the court to the observations of the Hon'ble Supreme Court in *Special Leave Petition (Crl.) Nos. 5779-5780/2023* wherein the Hon'ble Supreme Court was pleased to observe as follows:-

“At least the nature of the complaint reveals certain ingredients of criminality which are required to be tested in course of the procedure stipulated in the Code itself. The law enforcement agency, on conclusion of the investigation, chose to submit Charge-sheet containing certain questions that ought to have been examined at the stage of framing of charges”.

Learned advocate for the complainant/opposite party no.2 further submitted that the present case is one where the petitioners are thickly connected with the offence as the company of the parents of the petitioners is beneficiary of the funds in respect of which the present FIR has been registered and the quantum of entry, adjustment, misappropriation and breach of trust have been committed.

Mr. Roy Chowdhury, learned advocate for the State has produced the case diary. However, on a specific query of this Court, Mr. Roy Chowdhury submitted that till date in connection with the investigation, notice under Section 41A of the Code of Criminal Procedure has not been served upon the present petitioners.

As such, there is no question of cooperation or non-cooperation with the investigation, as between the selfsame parties in *Special Leave Petition (Crl.) Nos. 5779-5780/2023*, the Hon'ble Supreme Court has been pleased to grant a protective order of not

to be arrested. In the present case, I direct that the petitioners will also not be arrested till 14.08.2023. In the meantime, if the investigating agency so wants, they will be at liberty to issue notice. The petitioners would cooperate with the same. However, as observed by the Hon'ble Supreme Court that the test of criminality is not to be assessed by the High Court at the stage of consideration of Section 482 of the Code of Criminal Procedure, I am not inclined to interfere with the final reliefs prayed for by Mr. Bhattacharjee, learned advocate for the petitioners.

With the aforesaid observations, the revisional application being CRR 2528 of 2023 is disposed of.

Pending applications, if any, are consequently disposed of.

All concerned parties are to act in terms of a copy of this order duly downloaded from the official website of this court.

[Tirthankar Ghosh, J]