

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 2173 of 2019

Jhantu Sekh alias Jhantu Ajizul Sekh

Vs.

The State of West Bengal.

For the Petitioner : Mr. Atis Kumar Biswas,
Mr. Amit Singh.

For the Opposite Party/State : Mr. Saswata Gopal Mukherjee, ld. PP
Ms. Faria Hossain,
Mr. Anand Keshari.

Heard on : 12.07.2023

Judgment on : 01.08.2023

Shampa Dutt (Paul), J.:

1. The present revision has been preferred against an order dated 30th May, 2019 passed by the Learned Judicial Magistrate, Tehatta, Nadia, in connection with Tehatta Police Station Case No. 498 of 2016 dated 10th September, 2016 under Sections 447/448/471 of the Indian Penal Code and under Section 14 of the Foreigners Act corresponding to G.R. Case No. 1022 of 2016.

2. The petitioner's case is that on the basis of a complaint filed by one Kamal Yadav, Commanding Officer of BOP, Patharghata to the Officer-in-Charge, one criminal case being Tehatta Police Station Case No. 498 of 2016 dated 10th September, 2016 was registered under Sections 467/468/471 of the Indian Penal Code and under Section 14 of the Foreigners Act.
3. On 10th September, 2016, the present petitioner was produced before Tehatta Police Station at the time of lodging the complaint and was arrested.
4. At the time of arrest of the petitioner, certain documents were seized from his possession and seized as per seizure list.
5. After completion of investigation the Investigating Officer submitted charge sheet being no. 779 of 2016 dated 31st December, 2016 under Sections 467/468/461 of the Indian Penal Code and under Section 14 of the Foreigners Act.
6. A petition under Section 239 of the Code of Criminal Procedure was filed on behalf of the petitioner before the Learned Trial Court for discharge of the petitioner on the plea that the investigation conducted by the investigating agency against the petitioner is a frivolous and harassing one.
7. It was further submitted that to substantiate a prima facie case against the present petitioner, the Investigating Officer could not collect any evidence, which could lead to the conclusion that the petitioner was a Bangladeshi national.

8. It is also submitted that to prove, prima facie the allegation under Section 14 of the Foreigners Act, the Investigating Officer did not even contact the Bangladesh High Commission to collect the details of the petitioner. It was also not determined by the investigating agency, on enquiry, that the passport seized from the petitioner was forged.
9. After considering the petition under Section 239 of the Code of Criminal Procedure, the Learned Trial Court, was pleased to reject the application of the petitioner on some frivolous grounds.
10. **Mr. Atis Kuamr Biswas, learned counsel for the petitioner** has submitted that the Learned Trial Court has failed to appreciate, that no documents were found during investigation, from which it could be prima facie seen that the petitioner is a Bangladeshi national.
11. The prosecution has thus miserably failed to prima facie prove that the allegations have any substance to proceed towards trial in respect of the petitioner.
12. The issuance of voter card dated 7th February, 2017 and the passport dated 27th February, 2019, in favour of the petitioner, after initiation of the present case, does not prima facie prove or establish that the petitioner could be a Bangladeshi national.
13. It is thus submitted that the impugned order dated 30th May, 2019 passed by the learned Judicial Magistrate, Tehatta, Nadia, in connection with Tehatta Police Case No. 498 of 2016 dated 10th September, 2016 under Sections 467/468/471 of the Indian Penal Code and under Section 14 of the Foreigners Act and corresponding to G.R. Case No. 1022 of 2016 was on total non-application of judicial mind on the part of

the Learned Trial Judge. And as such the same is thus liable to be set aside.

14. It is thus prayed that the impugned proceedings being bad in law is to be quashed.

15. Mr. Saswata Gopal Mukherjee, learned Public Prosecutor has placed the case dairy and submitted that the petitioner was apprehended at the border with no valid documents. There being a strong prima facie case against the petitioner, the present case should be allowed to proceed towards trial.

16. The materials on record including the case diary and the seizure list show that the following articles were seized from the possession of the petitioner at the time of arrest:-

(i) Indian Currency Rs.5662/- (Five thousand six hundred sixty two rupees).

(ii) Cod pad mobile model no. 8298-100 A/W.

(iii) 03 Sims Airtel – 899151000244287892

-899151000327285822

(b) Uninor – 89919291516010447629

(iv) SBI Green Card no. Remit Card – 0060-060011265376

(iv) Pan Card no. – AYUPM 4051F

(v) Adhar Card no. – 890302630713

(vi) Pan Card – FXRPS 4414R

(vii) Xerox copy of voter card to the name Sekh Jhantu s/o Munchhur of Patharghata Purbapara, Patharaghata, Tehatta, Nadia, Card No. – WB/11/073/219711.

- 17.** It is the case of the prosecution that all the documents seized are fake and the same is subject to proof at the time of trial.
- 18.** It is the case of the complainant (BSF) that at the time of arrest, during preliminary questioning, the petitioner allegedly revealed that he is a Bangladeshi National.
- 19. Memo of arrest, gives the address of the petitioner as:- Vill-Shivnagar, P.O. Chandrabash, P.S. Damurhuda, Dist. Chuandanga, Bangladesh.**
- 20.** Thus, considering the case of the investigating agency/prosecution that the documents seized are allegedly fake and the fact that the address in the memo of arrest is that of Bangladesh, a prima facie case against the petitioner has been made out, which is subject to proof by way of a trial. And as such the order under revision requires no interference by this Court, the same being in accordance with law.
- 21. The revisional application being CRR 2173 of 2019 is accordingly dismissed.**
- 22.** The order dated 30th May, 2019 passed by the Learned Judicial Magistrate, Tehatta, Nadia, in connection with Tehatta Police Station Case No. 498 of 2016 dated 10th September, 2016 under Sections 447/448/471 of the Indian Penal Code and under Section 14 of the Foreigners Act corresponding to G.R. Case No. 1022 of 2016, is affirmed.
- 23.** The case being of the year 2016, trial Court to make all endeavour to complete the trial within six months from the date of this order.

- 24.** All connected applications, if any, stands disposed of.
- 25.** Interim order, if any, stands vacated.
- 26.** Copy of this judgment be sent to the learned Trial Court for necessary compliance.
- 27.** Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)