

25-08-2023
Subha
D/L 66
Ct no.34

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction

CRR 3412 of 2022
with
CRAN 02 of 2023

Bijay Yadav and Ors.
-versus-
State of West Bengal

Mr. Sompriya Chowdhury
Ms. Rajnandini Das
....for the petitioners.

Mr. Avishek Sinha
...for the State.

Supplementary affidavit so filed be kept with the record.

The petitioners have challenged the order dated 24th June, 2022 passed by the learned Additional Sessions Judge, Fast Track Court No. 1, Alipore, South 24 Parganas wherein the learned court was pleased to reject the application for discharge under Section 227 of the Code of Criminal Procedure in connection with Sessions Case No. 32(09)/2019 arising Anandpur P. S. Case No. 257 of 2018 dated 20th September, 2018 under Sections 302/201/34 of the Indian Penal Code.

Mr. Somopriya Chowdury, learned advocate appearing on behalf of the petitioners drew the attention of this court to the statement recorded under Section 164 of the Code of Criminal Procedure of one Indra Paswan. By relying upon the statement recorded under Section 164 of the Cr.P.C, the learned advocated intended to emphasize regarding the complicity of the present petitioners.

According to the learned advocate, the room was bolted from inside, which was opened by breaking the locks and subsequently two dead bodies were recovered.

Learned advocate submits that even though the names of these three petitioners allegedly appear for removal of the two dead bodies or deceased, yet their complicity so far as the offence under Section 302 IPC is hardly made out in the background of the statement of other witnesses and the evidences which have been collected so far as the petitioners are concerned.

Learned advocate submits that having regard to the manner in which the learned trial court has dealt with the application under Section 227 of the Code of Criminal Procedure and the facts which emanate from the materials collected by the Investigating Agency do not reflect the complicity of the petitioners in the removal of evidence for the purposes of commission of offence under Section 302 of the Indian Penal Code which would result in implicating them both for the offence under Section 302 IPC and under Section 201 of the Indian Penal Code.

To that effect, learned advocate has drawn the attention of this court regarding the statements wherein it has been divulged by the accused persons /petitioners that they are afraid as such unknowingly removed the bodies and have nothing to do with the persons who have died. To that effect learned advocate submits that no material is appearing in the evidence against these petitioners which would reflect that there was any inimical relationship between the persons who have died and the present

petitioners who have been foisted with the present criminal case.

Learned advocate submits that the order of discharge so rejected by the learned trial court should be set aside and the petitioners be discharged from the present criminal case.

Mr. Sinha, learned advocate appearing on behalf of the State on the other hand produces the materials so collected by the Investigating Agency which would be relied in course of trial. Learned advocate has pointed out that one of the accused persons with whom there was a conspiracy is absconding. The conspiracy initiated between one of the hotel employees namely, Pawan Chowdhury with the deceased Balaram Keshari for the purposes of ending the life of Archana Palangdar. So far as the prosecution case is concerned, that both the aforesaid Balaram and Archana were married separately and they had an illicit relationship. The deceased Balaram was facing social embarrassment and/or other difficulties for which he intended to end the life of the deceased Archana. The prosecution case also reflects that Archana was smothered to death while the reasons for the death of Balaram reflects from the scientific experts that there were poison available in the viscera report. Now in this case the peculiarity is that Balaram had a conspiracy with the accused Pawan Chowdhury who is still absconding. The present petitioners were also somehow or the other associated with the hotel. They were seen removing the dead bodies and the dead bodies were collected at different places. The complaint or the criminal law was set into motion after one of the persons complained of a dead body being found. So, in this case

the investigation commenced after the dead body was found of one of the deceased and thereafter the investigation carried on and after about a fortnight dead body of the other individual was recovered.

The CFSL report reflects that the bolt and other locks on the door were intact. The complicity of the present petitioners and the reasons assigned by them for removal of the dead bodies do not in any manner co-relate to normal human conduct. The answer of the learned advocate for the petitioners is that they were afraid and they removed the body is overpowered by the prosecution case of conspiracy between the persons working at the hotel and the issue relating as to whether there was an administration of poison by the absconding accused.

At this stage when this court is called upon to evaluate regarding participation of the accused persons in the alleged crime and the issue whether they are entitled to be discharged, the court is supposed to balance between 'some suspicion' and 'grave suspicion' and also not to conduct a roving enquiry. Further, the provisions of Section 228 of the Code of Criminal Procedure "do vest the trial court with the powers that the court/judge is of the opinion that there is ground for presuming that the accused has committed an offence."

In this case what is appearing from the materials is that an offence has been committed by the petitioners to face a trial. So far as the applicability of the sections are concerned, the same would be considered by the trial court while framing the charges, as at this stage the learned trial court would check from the records the

individual participation of each of the accused persons in respect of the alleged offences.

Having regard to the totality of the circumstances, I am of the opinion that this is not a fit case for interference or for scuttling the trial proceedings. Accordingly, no interference is made with regard to the order dated 24th June, 2022 passed by the learned Additional Sessions Judge, Fast Track Court no.1, Alipore, South 24 Parganas. Thus, the order so passed by the learned trial court is hereby affirmed. The learned trial court is directed to frame charges as directed above and to proceed with the trial of the case.

With the aforesaid observations, the revisional application being CRR 3412 of 2022 along with the connected application being CRAN 02 of 2023 is disposed of.

Pending any other applications are hereby 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]

