

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.R. 2397 of 2014

**Binod Kr. Agarwal @ Binod Agarwal
-Vs-
The States of West Bengal & Anr.**

For the Petitioner : Mr. Kallol Mondal
Mr. Krishan Ray
Mr. Souvik Das
Ms. Anamitra Banerjee
Mr. Ayan Mondal

For the State : Mr. N. P. Agarwal
Mr. P. Bose

Heard on : 19.06.2023, 17.07.2023

Judgment on : 11.12.2023

Ananya Bandyopadhyay, J.:-

1. The instant revisional application is filed by petitioner being aggrieved by and dissatisfied with quashing of the proceedings being C.G.R. No. 4046 of 2013 arising out of South Port Police Station Case No. 164 of 2013 dated 05.08.2013 registered for investigation into offences punishable under Sections 407/120B/411 of the Indian Penal Code, 1860, now pending before the Court of Learned Chief Judicial Magistrate, Alipore, South 24 Parganas.
2. The present case was initiated on the basis of a complaint filed by the opposite party no.2 under the capacity of Manager of M/s. Ajay Goods

Carrier India Pvt. Ltd. (hereinafter referred to as the said company with the Officer-in-Charge, South Port Police Station and the same has been registered as South Port Police Station Case No. 164 of 2013 dated 05.08.2013 registered for investigation into offences punishable under Sections 407/120B of the Indian Penal Code, 1860.

3. The allegation brought by way of the First Information Report inter alia is to the following effect that as per the direction of one of the Directors of the said company, the opposite party no.2 on 24.07.2013 arranged for sending 235 bags of Beetle Nuts to Nagpur through one Debanka Biswas's lorry. As has been represented by the said Debanka Biswas the said beetle nuts will be sent to Nagpur through a driver namely Santosh Singh in vehicle no. WB-11B-1056. The said vehicle was set off for transportation from Khidirpur Katapukur to Nagpur on 24.07.2013 at about 22.00 hrs along with transit declaration bearing no. 20130689316 dated 24.07.2013 having its validity till 27.07.2013. Afterwards when endeavour was made to ascertain the status of such transportation no information could be received from the driver, nor it had reached its destination. As such the instant complaint is being filed so that necessary steps to be taken by police.
4. Petitioner stated that after conclusion of investigation police submitted charge sheet under sections 120B/407/411 of the Indian Penal Code, 1860 vide Charge Sheet No. 139 of 2014 dated 21.06.2014. It was pertinent to mention herein that in such charge sheet the petitioner had been charged with the offence punishable under sections 120B/407 of the Indian Penal Code, 1860.

5. Petitioner stated that after filing of charge sheet by the police, the Learned Chief Judicial Magistrate, South 24 Parganas, Alipore had been pleased to take cognizance of the offences and thereby issued warrant of arrest against the accused persons including the present petitioner who had not yet been arrested.
6. Petitioner stated in the prevalent facts and circumstances of the present case, the entire proceeding is liable to be quashed against the present petitioner and since he is not involved in commission of the alleged offence.
7. Learned Advocate for the petitioner submitted that –
 - i. Any further continuance of the proceedings against the present petitioner is not tenable either on facts or in law.
 - ii. Petitioner is in no way involved with the alleged offences as mentioned in the First Information Report.
 - iii. The name of the petitioner does not transpire in the First Information Report nor any cogent evidence which can establish any involvement of the petitioner in commission of the alleged offence could be collected and as such the continuance of the instant proceeding against the present petitioner will be an abuse of the process in law.
 - iv. The aforesaid proceeding initiated against the petitioner is not in consonance with the provisions of law and is thus illegal; the entire proceeding is illegal and is liable to be quashed by appropriate order/orders passed by this Hon'ble Court.
 - v. It is expedient in the interest of justice, to uphold the dignity of law that the impugned proceeding is quashed forthwith.

vi. In the prevalent facts and circumstances of the present case, the entire proceeding is liable to be quashed against the present petitioner.

vii. An order as prayed for is warranted under the present facts and circumstances.

8. It is pertinent to place the following Sections of the Indian Penal Code 1860:

407. Criminal breach of trust by carrier, etc.—

Whoever, being entrusted with property as a carrier, wharfinger or warehouse-keeper, commits criminal breach of trust in respect of such property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

411. Dishonestly receiving stolen property. —

Whoever dishonestly receives or retains any stolen property, knowing or having reason to believe the same to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

9. On 24.07.13 the accused persons who were Debanko Biswas owner of the lorry, Shantosh Singh who was the driver of the lorry bearing Registration No- WB 118-1056 entered in to criminal conspiracy with each other and committed Criminal Breach of Trust in respect of 235 bags weighing about 16,289 Kgs of beetle nuts valued at Rs. 21 Lakh. The accused persons were entrusted by the complainant to carry the said goods from Kantapukur, Kolkata to Nagpur but the accused persons neither delivered the said goods at Nagpur nor returned to Kolkata. On the basis of statement of arrested driver Anil Ray and being led two other accused persons namely

Radhayshyam Yadav and Lakhi Chand Yadav as receiver of stolen articles were arrested on 15.8.13 from Debra, Paschim Midinipur for their direct complicity into the case. On being identified by them, the involved lorry bearing Registration Number WB11B-1056 was recovered from Garbeta, Paschim Medinipur under proper seizure list. On 19.08.13, on source information one Gopal Maity (SL no-6) was arrested from NandaKumar Police Station Purba Medinipur for his direct complicity into the case and on pursuant of his statement on 20.08.13, a portion of stolen beetle nuts that is 65 bags (3,800 Kg) was recovered/seized from his possession. On the statement of driver Anil Ray and being led by identified, another two accused persons namely Radhayshyam Yadav and Lakhi Chand Yadav were arrested on 15.8.13 from Debra, Paschim Midinipur for their direct complicity in the case as receiver of the stolen articles. The involved lorry bearing Registration No. WB11B-1056, was recovered from Garbeta, Paschim Medinipur under proper seizure list. On 19.08.13, on information from one Gopal Maity (SL no-6) was arrested from NandaKumar Police Station Purba Medinipur for his direct complicity into the case and on pursuant to his statement on 20.08.13, a portion of stolen beetle nuts that is 65 bags (3,800 Kg) was recovered/seized from his. Anil Ray the arrested driver of lorry bearing Registration No. WB-11B-1056 unloaded the stolen articles under the instructions and direction of the petitioner namely Binod Agarwal and others. Investigation revealed that Binod Agarwal was the main conspirator behind this offence and due to this reason chargesheet was submitted against him by showing him absconding. After completion of investigation on 26.6.14 the final report as Charge Sheet no- 139/2014 was

submitted before the court of Learned Chief Judicial Magistrate of, Alipore, South 14 Pgs, which was then sub judice. On 12.9.13 the anticipatory bail of accused i.e. Petitioner Binod Agarwal under Section 438 of the Cr. P.C. was rejected by the Hon'ble High Court, Calcutta vide CRM no-11422 of 2013. After submission of charge sheet on 10.09.2014 the accused/petitioner Binod Agarwal filed a bail petition before Learned Chief Judicial Magistrate, Alipore, where his bail was rejected, and he was taken into Judicial Custody till 22.09.2014.

10. During the investigation, the officers visited the police office and examined the witness. On investigation, one Anil Roy was arrested on 14.8.13 and pursuant to his statement after two hours Laxmi Chand Yadav and Radhyasan Yadav was arrested and his involved lorry B/NO WB 11B1056 was recovered from Garbeta, West Medinipur area. After pursuing the statement of Laxmi Chand Yadav, one Gopal Maity was arrested on 20.8.13 from NandaKumar Police Station, Purba Medinipur Area. On pursuing the statement of Gopal Maity, sixty-five bags of stolen beetle nuts were recovered from Egra Police Station area under East Medinipur. The agent Laxmi Biswas was also arrested from Kalighat area, but the rest of the articles could not be recovered. Investigation revealed that the FIR named accused Debanko Biswas and his brothers Mriganko Biswas and Sasanko Biswas and their agent Binod Agarwal respectively were involved in the cheating business and misappropriated of the beetle nuts. All of them were absconding till the bail prayer of which was rejected by Hon'ble High Court. Despite several attempts they couldn't be apprehended. P.S Case No.

852/13 under Section 406 of the IPC was lodged after intimating the instant case in order to illustrate to the I.O.

11. In the judgment of **State of Haryana and Others v. Bhajan Lal and Others**¹, the Hon'ble Supreme Court held as under :

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

. (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do

¹ 1992 SCC (Cri) 426

not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non- cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

12. The complaint revealed serious allegations against the present petitioner and the veracity of the same require to be unfolded and substantiated through trial on adducing proper evidence.
13. In view of the above, the criminal revisional applications being CRR 2397 of 2014 is dismissed.
14. There is no order as to cost.
15. Lower court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.

16. A Photostat certified copy of this order, if applied for, be given to the parties on a priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)