

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.R. 3951 of 2011

**Mrityunjay Mandal and Anr.
-Vs-
The State of West Bengal**

For the Petitioners : Mr. Sourav Chatterjee

For the State : Ms. Faria Hossain
Mr. Anand Keshari

Heard on : 29.08.2023, 12.09.2023

Judgment on : 12.12.2023

Ananya Bandyopadhyay, J.:-

1. The instant revisional application is filed by the petitioners praying for quashing of the proceeding of G.R. Case No. 439/2008 pending before the Learned Chief Judicial Magistrate, Hooghly arising out of Mogra Police Station Case No. 44 of 2008 dated 12.05.2008 under Sections 399/402 of the Indian Penal Code and under Sections 25/27 of the Arms Act and all orders passed therein including the order dated 10.12.2008 passed by the Learned Chief Judicial Magistrate, Hooghly thereby taking cognizance of offences punishable under Sections 399/402 of the Indian Penal Code and under Sections 25/27 of the Arms Act in connection with the aforesaid case.

2. Petitioners stated to have been arraigned as accused persons in the instant case being Mogra Police Station Case No.44 of 2008 dated 12.5.2008 under Sections 399/402 of the Indian Penal Code and under sections 25/27 of the Arms Act which was registered for investigation on the basis of a suo-motu written complaint lodged by one Sri Sudip Rudra, S.I. of Police, Mogra Police Station.
3. Petitioners stated to have been arrested in connection with the instant case and were subsequently enlarged on bail.
4. Upon conclusion of a purported investigation, the Investigating Agency submitted a charge sheet being Charge Sheet No.100/2008 dated 31.10.2008 under Sections 399/402 of the Indian Penal Code and under sections 25/27 of the Arms Act against the petitioners herein and 4 others.
5. Petitioners submit that the instant proceeding was initiated as early in 2008 and the trial is yet to commence despite a lapse of more than 3 years. Such delay has caused extreme prejudice to the petitioners and the impugned proceedings is liable to be quashed merely on that score itself. Moreover, such delay was violative of the fundamental right of the petitioners to speedy trial as enshrined in Article 21 of the Constitution of India.
6. Petitioners submit that the Investigating Agency had drawn the inference that the petitioners were prima facie guilty for the offences punishable under Sections 399/402 of the Indian Penal Code and under sections 25/27 of the Arms Act merely from the fact that they had assembled near the approach of a bridge and could give no explanation for their presence. Taking the

prosecution case at its face value, there was no material to show that the petitioners had assembled for the purpose of committing a dacoity or they had made any preparation for committing the same. The materials furnished by the Investigating Agency in support of such allegations merely show that some persons including the petitioners herein were found near the approach of a bridge. The mere fact that these persons were found near the approach of a bridge, by itself, was not at all sufficient to prove that the petitioners and others had assembled for the purpose of committing dacoity or for preparations to accomplish that object. Since the alleged place where the petitioners and others were found was near the approach of a bridge which happened to be a busy thoroughfare, coupled with the fact that the petitioners and others were intercepted in the afternoon at about 15:15 hours, it was difficult to believe that the petitioners would assemble at such a conspicuous place with the intention of committing a dacoity and would take such a grave risk.

7. Petitioners submit that it had been further alleged that some of the accused persons who were caught hold of by the Investigating Agency allegedly made a statement before the police officials that they were going to commit a dacoity, but this statement being dearly inadmissible deserves to be excluded from consideration. In this view of the matter, there was no legal evidence to make out a prima facie case under Sections 399/402 of the Indian Penal Code and under sections 25/27 of the Arms Act against the petitioners herein.

8. Petitioners submit that the petitioners are absolutely innocent and have been falsely implicated in the instant case out of personal grudge and rivalry.
9. Petitioners submit that further continuation of the impugned proceedings shall amount to an abuse of the process of the court and it is expedient in the interests of justice that the impugned proceedings and all orders passed therein including the impugned order dated 10.12.2008 be quashed and/or set aside in order to prevent the abuse of the process of the court or otherwise to secure the ends of justice.
10. Petitioners submit that it is an apposite case where this Hon'ble Court may invoke its inherent powers under Section 482 of the Code of Criminal Procedure and quash and/or set aside the impugned proceedings and all orders passed therein including the impugned order dated 10.12.2008 to prevent the abuse of the process of the court or otherwise to secure the ends of justice.
11. Learned Advocate for the petitioners submitted that -
 - i. The instant proceeding was initiated as early in 2008 and the trial is yet to commence despite a lapse of more than 3 years. Such delay has caused extreme prejudice to the petitioners and the impugned proceedings is liable to be quashed merely on that score itself. Moreover, such delay is violative of the fundamental right of the petitioners to speedy trial as enshrined in Article 21 of the Constitution of India.

- ii. The Investigating Agency has drawn the inference that the petitioners were prima facie guilty for the offences punishable under Sections 399/402 of the Indian Penal Code and under sections 25/27 of the Arms Act merely from the fact that they had assembled near the approach of a bridge and could give no explanation for their presence. Taking the prosecution case at its face value, there was no material to show that the petitioners had assembled for the purpose of committing a dacoity or they had made any preparation for committing the same. The materials furnished by the Investigating Agency in support of such allegations merely shows that some persons including the petitioners herein were found near the approach of a bridge. Some of them were armed with guns, some had cartridges and others ran away. The mere fact that these persons were found near the approach of a bridge, by itself, is not at all sufficient to prove that the petitioners and others had assembled for the purpose of committing dacoity or for making preparations to accomplish that object. Since the alleged place where the petitioners and others were found was near the approach of a bridge which happens to be a busy thoroughfare, coupled with the fact that the petitioners and others were intercepted in the afternoon at about 15:15 hours, it is difficult to believe that the petitioners would assemble at such a

conspicuous place with the intention of committing a dacoity and would take such a grave risk.

- iii. It has been further alleged that some of the accused persons who were caught hold of by the Investigating Agency allegedly made a statement before the police officials that they were going to commit dacoity, but this statement being clearly inadmissible deserves to be excluded from consideration. In this view of the matter, there is no legal evidence to make out a prima facie case under Sections 399/402 of the Indian Penal Code and under sections 25/27 of the Arms Act against the petitioners herein.
- iv. The petitioners are absolutely innocent and have been falsely implicated in the instant case out of personal grudge and rivalry
- v. The allegations in the impugned First Information Report, Charge Sheet and the materials on record do not disclose the essential ingredients of the offences punishable under Sections 399/402 of the Indian Penal Code and under sections 25/27 of the Arms Act and as such the impugned criminal proceedings pending against the present petitioners is not maintainable in law and is liable to be quashed.
- vi. The uncontroverted allegations in the impugned First Information Report and the materials in the Charge Sheet even if are believed to be true and are taken to their entirety do not disclose the commission of any offence, far less offences under Sections

399/402 of the Indian Penal Code and under sections 25/27 of the Arms Act.

- vii. There are no specific materials available against the petitioners that justify continuation of the impugned proceedings against them.
- viii. No case under Sections 399/402 of the Indian Penal Code and under sections 25/27 of the Arms Act has been made out against the present petitioners and as such there is nothing that points out or establishes the culpability of the petitioners.
- ix. Very initiation and/or continuation of the impugned proceedings are wholly unfounded, without any basis and has occasioned a travesty of justice.
- x. Further continuation of the impugned proceedings shall amount to an abuse of the process of the court and it is expedient in the interests of justice that the impugned proceedings and all orders passed therein including the impugned order dated 10.12.2008 be quashed and/or set aside in order to prevent the abuse of the process of the court or otherwise to secure the ends of justice.
- xi. It is an apposite case where this Hon'ble Court may invoke its inherent powers under Section 482 of the Code of Criminal Procedure and quash and/or set aside the impugned proceedings and all orders passed therein including the impugned order dated

10.12.2008 to prevent the abuse of the process of the court or otherwise to secure the ends of justice.

- xii. The continuation of the impugned proceedings shall result into an abuse of the process of law and shall cause miscarriage of justice.
- xiii. The impugned proceedings and all orders passed therein including the impugned order dated 10.12.2008 are otherwise bad in law and are liable to be set aside and/or quashed.

12. The Learned Advocate for the State submits of the existence of a strong prima facie case against the present petitioners which has to be decided through appreciation of evidence through trial. The present petitioners were apprehended on the spot on their way to escape with recovery of arms and ammunition from their possession. Considering the severity of the alleged offence the revisional application must be dismissed.

13. In the case of ***State of Haryana and Others v. Bhajan Lal and Others***¹ the Hon'ble Supreme Court observed as follows :

“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

¹ 1992 SCC(Cri) 426

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 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.”

14. The S.I. Sudip Rudra of Mogra Police Station filed a complaint before the Officer-in-Charge, Hooghly on 12.05.2008 inter alia stating that the complainant received a source information concerning certain unknown criminals to have assembled at Iswargupta Setu for commission of crime. Accordingly, the said complainant informed the Officer-in-Charge of Mogra P.S. seeking instruction to discharge his duty based on the information received as aforesaid and lodged a written dairy at Mogra P.S. and left for the place of occurrence for further action. The unknown miscreants tried to escape at the sight of the police party. However, the complainant along with his force successfully captivated the F.I.R. named accused persons who thereafter revealed their identities. Further, the raiding party seized certain arms and ammunitions from the custody of the accused persons. The present petitioner Mrityunjay Mandal is one of the accused from whom one pipe gun has been recovered. From the custody of the other petitioner Subhas Biswas three rounds of ammunition were recovered. The seizure list dated 12.05.2008 apparently portray the signature of the present petitioners. The statements recorded under Section 161 of Cr.P.C. prima facie revealed the presence of the petitioners at the place of occurrence and involvement in

the alleged offence. The F.I.R. reveals allegation of commission of cognizable offence serious in nature which cannot be quashed at this stage.

15. Since the case relates to the year 2008, the Learned Trial Court is to dispose of the instant G.R. Case No. 439 of 2008 preferably within a period of 1 year without granting unnecessary adjournments to either of the parties.
16. In view of the above discussions, the instant criminal revisional application being CRR 3951 of 2011 is dismissed.
17. There is no order as to cost.
18. Lower court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.
19. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)