

12.05.2023
cm (7)

IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
CRIMINAL MISCELLANEOUS JURISDICTION

C.R.R. 264 of 2022

In the Matter of : Sanjit Bhowmik

.... petitioner.

Mr. Sourav Ganguly

... for the Petitioner.

Mr. Aditi Shankar Chakraborty, Ld. A.P.P.,
Mr. Nilay Chakraborty

... For the State.

Being aggrieved by the order no.13 dated 27.9.2022 passed by the learned Judicial Magistrate, Mathabhanga refusing to discharge the petitioner in connection with Ghoksadanga Police Station Case No.183 of 2018 dated 14.10.2018 corresponding to G.R. Case No.491 of 2018.

After completion of investigation, charge sheet vide no.216 of 2018 dated 30.11.2018 has been filed. The prosecution case arose out of a complaint lodged by one Gopal Chandra Mondal, Sub-Inspector of Police attached to Ghoksandanga Police Station under Section 186/332/353/325/34 of the Indian Penal Code read with Section 3/4 of the West Bengal Gambling and Prize Competition Act precisely stating that on receipt of source information on 13.10.2018 at 23:10 hours the aforesaid Sub-Inspector of Police accompanied by his force went to the

spot and found 15 persons playing cards by exchanging of money.

On an endeavour to apprehend the miscreants the police officers were subjected to physical assault. Out of 15 persons two were arrested and the rest fled. The names of the other accused persons transpired from the statement of the two arrested persons.

The learned advocate for the petitioner submits that the name of the petitioner was not mentioned in the FIR and was subsequent revelation in the charge sheet. The petitioner has been falsely implicated in the aforesaid case to his detriment pending the scope of an employment to which he is a successful contender.

The learned advocate for the State submitted that the materials on the case diary including the statements recorded under Section 161 of the Code of Criminal Procedure did not reveal or state the name of the petitioner as one of the accused persons.

In State of Haryana and Ors. v. Bhajan Lal and Ors.¹ this Court in the backdrop of interpretation of various relevant provision of the Code of Criminal Procedure (for short, Cr.P.C.) 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 of the Constitution of Indian or the inherent powers under Section 482 Cr.P.C. gave the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of the court or otherwise to secure the ends of justice. Thus, this Court made it

¹ 1992 Supp. (1) SCC 335

clear that it may not be possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formulae and to give an exhaustive list to 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 of 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 office 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.

In exercise of inherent powers of the High Court under Section 482 Cr.P.C. if the offence committed by the accused is not apparent or prima facie established in the complaint the proceedings before the trial court can be quashed in order to prevent the abuse of process of law.

In the instant case, there is no iota of complicity or involvement of petitioner in the alleged offence and to allow to continue with the trial before the learned trial court would indubitably be an abuse of process of law along with unnecessary consumption of court hours without any plausible result.

Accordingly, the instant revisional application is allowed.

Charge sheet vide no.216 of 2018 dated 30.11.2018 is set aside and Ghoksadanga Police Station Case No.183 of 2018 dated 14.10.2018 corresponding to G.R. Case No.491 of 2018 pending before the learned Judicial Magistrate, Mathabhanga as regards the present petitioner is quashed.

Copy of the order sent to the learned trial court for information and necessary action.

(ANANYA BANDYOPADHYAY, J.)