

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

Present:

The Hon'ble Justice Rai Chattopadhyay

CRR 41 of 2016

**Susanta Ghosh
Vs.
State of West Bengal**

For the Petitioner

: Mr. Bikas Ranjan Bhattacharrya,
Ld. Sr. Adv.
: Mr. Manoj Malhotra,
: Mr. Mainak Ganguly.

For the State

: Mr. Saswata Gopal Mukherji,
: Mr. Rudradipta Nandy
Ld. APP,
: Mr. Ranabir Roy Chowdhury,
: Mr Mainak Gupta.

Heard On: 13/12/2023.

Judgment On: 30/01/2024.

Rai Chattopadhyay, J.

1. An order of the Special Judge, 1st Court at Alipur, District South 24 Parganas, dated 24.11.2015 is under challenge in this revision. The order as above was passed in Special Case No. 03 of 2013. The trial Court by dint of the said impugned order dated 24.11.2015 has disallowed and rejected the prayer of the present petitioner for discharge, as was filed by him before the Court under Section 239 of the Code of Criminal Procedure, 1973.

2. The FIR is dated 19.08.2011. The *suo moto* FIR as above was lodged by the Deputy Superintendent of Police, CID, West Bengal, alleging disproportionate asset of the present petitioner. Accordingly, a case was started being Alipur Police Station Case No. 259/2019 dated 19.08.2011 under Sections 13(1)(e) and 13(2) of the Prevention of Corruption Act, 1988.
3. The complainant in the said FIR has stated *inter alia* that the residential premises of the present petitioner being flat no. 46, at 247/1, D.N. Khan Road, Minto Park Govt. Housing Estate, Kolkata-700027, was searched in connection with another police case being Anandapur Police Station Case No. 36 of 2011, dated 06.06.2011 under Sections 147/148/149/448/326/307/506/201/120B of the Indian Penal Code and Sections 25 and 27 of the Arms Act, 1959, against the present petitioner. After special raid/search at the aforestated premises the police seized two keys of godrej almirah and its lockers kept within that premises and also a cash amount of Rs. 5,15,500/-. The complainant has further stated that the accused, i.e, the present petitioner since has been an elected member of the West Bengal Legislative Assembly, his self declaration on affidavit as was furnished before the Chief Electoral Officer, West Bengal, as a contesting candidate, was obtained from the official website. Allegedly, in the said affidavit dated 14.04.2011 on a non-judicial stamp paper and solemnly affirmed by the present petitioner, incorrect declaration was found to have been made. According to the complainant, as per the petitioner's affidavit before the Chief Electoral Officer as mentioned above, the total bank balance and cash in hand of the petitioner and his wife would be Rs. 1,25,992/-. According to the complainant there was no plausible explanation or supporting material for the present petitioner to hold and possess a cash amount more than what has been declared by him before the Chief Electoral Officer, as mentioned above. The complainant has noted in the

FIR that the assets as declared by the present petitioner in his affidavit before the Chief Electoral Officer, West Bengal, in the month of April, 2011, would have no parity with the assets found in his actual possession. Hence, against the present petitioner, who was at the relevant point of time of lodging of this FIR (that is, dated 19.08.2011), in custody with the CID, West Bengal, in connection with the other case as mentioned above, and was member of the Legislative Assembly of the West Bengal, the present case was lodged, alleging offence punishable under Sections 13(1)(e) and 13(2) of the Prevention of Corruption Act, 1988.

4. Pursuant to the said FIR dated 19.08.2011 the investigation was done and finally after conclusion of investigation the charge sheet dated 11.12.2013 was submitted. The present petitioner was named as an accused person in the said charge sheet and allegations of offences under Section 13(2) read with Section 13(1)(e) of the Prevention of Corruption Act, 1988, was made against him.
5. However, the petitioner was of the view that no tangible evidence against him could be found in this case and thus was prompted to file his prayer under Section 239 of the Code of Criminal Procedure, 1973, before the trial Court. The petitioner, by filing his prayer as above sought for an order of discharge of himself from the case.
6. The impugned order dated 24.11.2015 is the outcome of hearing of the parties as regards the petitioner's prayer under Section 239 of the Code of Criminal Procedure, 1973. The trial Court was not convinced with the grounds pleaded by the present petitioner as to why he should be discharged from the case and has ultimately rejected petitioner's prayer as above and fixed a date for framing of charges.

7. The trial Court has found that from the FIR and other documents, strong *prima facie* materials as regards the allegations made against the petitioner would be forthcoming. The trial Court has further held that the specific points as raised by the present petitioner before the same would involve determination regarding questions of facts and the same could not have been done but for a full fledged trial and after examination and cross-examination of witnesses and citing documents. Thus, the trial Court recorded its dissatisfaction about the sufficiency of the grounds pleaded before it by the present petitioner for discharge and dismissed petitioner's prayer.
8. This has prompted the present petitioner to seek an appropriate order from this Court in exercise of power under Section 482 of the Code of Criminal Procedure, 1973, firstly to set aside the impugned order dated 24.11.2015 and also to quash the entire proceeding as has been started against him vide FIR dated 19.08.2011.
9. Mr. Bhattacharya, Learned Senior Advocate is representing the revisionist in this case. Mr. Bhattacharya, Learned Senior Advocate is very candid in submitting that the entire criminal proceeding against his client must go, in view of the fact that the very basis of bringing allegations against the present petitioner is unfounded, unsubstantiated and motivatedly planted. Mr. Bhattacharya, Learned Senior Advocate has mentioned that the present petitioner has been a member of Legislative Assembly of West Bengal from the year 1986 to 2011. He says further that the petitioner has been a Minister of the Government of West Bengal from the year 1996 to 2011. It has been submitted that since all these years, the petitioner has been receiving daily allowance as the member of the Legislative Assembly of West Bengal. He says that the present petitioner is aggrieved that while assessing the assets of the petitioner, the authorities have failed to take into consideration, the daily allowance

earned by the petitioner during the 'check period' and that the same has been left altogether out of consideration while calculating the assets of the present petitioner, while assessing his income. According to Mr. Bhattacharya, Learned Senior Advocate, in that event, there has been suppression of material documents, non consideration of vital piece of evidence as regards the actual income of the revisionist during the 'check period', which has resulted into perfunctory investigation and *malafide*, on the part of the complainant, as well as the investigation authority.

10. Mr. Bhattacharya, Learned Senior Advocate has also pointed out to the fact that on prayer of the present petitioner, he has been provided with reply by the Assistant Secretary, West Bengal Legislative Assembly, in the form of a letter dated 19.05.2015 and also another one dated 11.12.2015. Those two documents have been very heavily relied on by the petitioner in this case. It is submitted that according to the certification of the competent authority the petitioner has earned a sum of Rs. 5,73,850/- as daily allowance as an M.L.A during the period from 01.04.2006 to 31.03.2011. That the letter dated 11.12.2015 is indicating about receipt of daily allowance by the petitioner as an M.L.A to the tune of Rs. 3,80,450/- during the period from 15.05.2001 to 30.03.2006. Allegedly, due to non-inclusion of this sum of money within the category of income of the present petitioner, while assessing his assets, in comparison to his income, the authorities have committed glaring mistake, directly and prejudicially affecting the precious rights of the petitioners, Mr. Bhattacharya, Learned Senior Advocate has said. He further says that, had the investigating authority taken into consideration the amount received by the present petitioner as the daily allowance, as certified by the competent authority in the manner as stated above, for the 'check period', there would not have been any cause of action left for the complainant to lodge a criminal case against the

petitioner as above. Thus, he says that the case itself is not maintainable against his client.

11. On behalf of the petitioner the following two judgments have been referred to. That is:-

- (i) ***State of Maharashtra, Etc. vs. Som Nath Thapa***, reported in ***AIR 1996 SC 1744***,
- (ii) ***Ghulam Hassan Beigh vs. Mohammad Maqbool Magrey & Ors.***, reported in ***2022 SCC OnLine SC 923***.

The petitioner has relied on the ratio and the decision of the Apex Court that if on the basis of materials on record, a Court could come to the conclusion that commission of offence is a probable consequence, then only a case for framing of charge would exist. Also that at the time of framing of charge the Court cannot act as a mere post office. It has to apply mind at the time of framing of charge as regards the fact that presumably the accused has committed the offence.

It is argued in this case on behalf of the accused person/petitioner, that the entire FIR narrative would be a blatant lie in the teeth of purported inaction by the complainant as well as the investigating authority in accumulating the appropriate evidence of the case so far as the income of the present petitioner is concerned, particularly on account of daily allowance, received by him as the member of the State Legislative Assembly. The petitioner has prayed for setting aside of the order dated 24.11.2015 of the Special Judge, 1st Court at Alipur, District South 24 Parganas, in case No. 03 of 2013 and also for quashing of the FIR in Alipur Police State Case No. 259/2019 and subsequent developments, pursuant to the said FIR.

- 12.** The State respondent has founded its argument principally on the point that at the time of framing of charge the Court has to ascertain existence of presumption of guilt of the accused person, on the basis of the records and documents available before it. In other words, it is the submission of the State respondent, firstly, that trial Court's presumption and/or strong suspicion as to the probability of the accused person to have committed the offence, would be sufficient reason, for it to frame charge against the accused person. Secondly that, the Court may presume about the petitioner's involvement with the alleged offence only on the basis of the records and documents produced before it by the investigation authority, which have been collected during investigation and the Court is not bound to take into reckoning any other defence document extraneous to those, at the time of framing of charge by it against the accused person.
- 13.** It has been submitted further that the petitioner has challenged the impugned order by agitating on certain points regarding that the alleged discrepancy shown as regards his income which is allegedly based only on non-consideration of relevant documents, regarding his income as the member of the State Legislature. According to the State respondent, the questions as to what would be the actual income of the accused person or if the investigation has been conducted properly or not, would be the questions of facts, which are required to be determined by the Court only after considering the evidence. So, it is stated that, it is also at a premature stage, when the petitioner has come forward to challenge the order as impugned in this case.
- 14.** The age old settled principle has been reiterated during argument by the State that in view of a case having been made out by the averments in the FIR, there would not be any occasion for a Court to exercise jurisdiction under Section 482 of the Cr.P.C, 1973, to quash the said FIR

or the subsequent proceedings thereto. It has been specifically argued that by considering the materials otherwise than the FIR or its supplementary documents, a revision Court cannot enter into conducting a mini trial of the case, as per the settled law.

15. The following judicial pronouncement have been relied on by the State respondent in support of its argument as above:

- (i) ***State of Tamil Nadu by Inspector of Police Vigilance and Anti-Corruption vs. N. Suresh Rajan & Ors.*** reported in **(2014) 11 SCC 709**,
- (ii) ***State represented by Deputy Superintendent of Police, Vigilance & Anti-Corruption, Tamil Nadu vs. J. Doraiswamy & Ors.*** reported in **(2019) 4 SCC 149**,
- (iii) ***Bhawna Bai vs. Ghanshyam & Ors.*** reported in **(2020) 2 SCC 217**,
- (iv) ***State of Uttar Pradesh & Anr. vs. Akhil Sharda & Ors.*** reported in **(2022) SCC OnLine SC 820**,
- (v) ***Ghulam Hassan Beigh vs. Mohammad Maqbool Magrey & Ors.*** reported in **(2022) SCC OnLine SC 913**.

16. The moot question this Court is required to consider in this case is, if the trial Court could have reasonably, justifiably and moreover legally, directed for framing charges against the accused person in order to proceed in a trial, instead of discharging him. It is the settled legal principle that while exercising its inherent power under Section 482 of the Cr.P.C, 1973, a Court should not proceed to conduct a mini trial by considering attending facts and circumstances and materials in the case. Instead, a case having been made out against the accused person in the FIR or the averments of the FIR expressing a strong *prima facie* case as alleged against the accused person would suffice for necessary restraint to be exercised by the Court in invoking its inherent jurisdiction under Section 482 Cr.P.C, 1973.

Section 240 Cr.P.C says about 'Framing of charge', in the following manner :-

"240. Framing of Charge.- (1) *If, upon such consideration examination, if any, and hearing, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try and which, in his opinion could be adequately punished by him, he shall frame in writing a charge against the accused.*

(2) *The charge shall then be read and explained to the accused, and he shall be asked whether he pleads guilty of the offence charged or claims to be tried."*

Section 239 Cr.P.C says when accused shall be discharged, in the manner, as follows:-

"239. When accused shall be discharged.-*If, upon considering the police report and the documents sent with it under section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing."*

17. A careful reading of the same would show that the Magistrate would first consider the police report and the documents sent with it under Section 173 Cr.P.C, 1973. He shall then form opinion that there is ground for presuming that the accused has committed the offence as alleged. His opinion as above would empower him under Section 240 Cr.P.C, 1973, to frame charge in the case. After considering the same documents, that is, the police report and others as per Section 173 Cr.P.C, 1973, examining the accused and giving the prosecution and the accused an opportunity of being heard, the Magistrate may form opinion about the groundlessness of the charge against the accused for which he would discharge him under Section 239 Cr.P.C, 1973, by dint of a reasoned order.

- 18.** It is settled law that either for framing of charge or to discharge an accused person, the Magistrate shall only look into the documents sent to it as per Section 173 Cr.P.C, 1973, along with the charge sheet. Also that, at this stage, a mere presumption of the Court on the basis of documents as above regarding commission of alleged offence by the accused would be sufficient for the Magistrate to frame charge against him. Discharge may result if Magistrate is of the opinion that charges are groundless, by considering the same materials. However, in that case, the statute has empowered the Magistrate, to examine the accused and hear him as well as the prosecution, to come to an opinion like that.

These provisions have been elaborately dealt with, in all the judgments as mentioned above, which have been referred to by the State.

- 19.** Application of mind by the Court would be an obligatory requirement by the Court, to the materials, before framing of charge and that the Court would never be a mere post office -- is the law settled in the pronouncements of the Supreme Court as relied on in this case by the petitioner. As a matter of fact, upon the charge sheet and other materials being submitted in the Court, the statutory requirement is that the Court has to '*consider*' those. '*Consideration*' should obviously be an act of conscious cognition, a process of evaluation of those materials, to be applied by the Court, as to the materials before it. In other words, in order to ascertain whether the said materials are presumably showing commission of alleged offence by the accused or if the charges against him are groundless, the Court would search for an answer of the question as to the bearing of the said materials, to the charges as alleged. It has not been the wisdom and desire of the legislature that the Court would merely be satisfied, with bear perusal of the documents submitted before it, but it is meant to be its incumbent duty to

understand and be satisfied that an offence as alleged has been presumably committed by the accused, before framing of charge against him, upon consideration of the documents placed and/or hearing the parties. This is a safeguard to eradicate possibility of false implication and/or abuse of Court's process by committing a case for trial, unnecessarily. 'Consideration' would mean and imply an active consideration and not a passive confirmation as to whether an inference of guilt of the accused person may be conceived or not.

In the case of ***State by the Inspector of Police, Chennai vs. S. Selvi*** reported in ***AIR 2018 SC 81***, the Supreme Court has held that the Court must proceed with presumption that material brought on record by prosecution are true and must evaluate such material with view to find out whether facts disclosed would reveal existence of ingredients of offence.

- 20.** Before proceeding any further, let us first understand as to what would be the scope for this Court to exercise its inherent extraordinary power under Section 482 of the Cr.P.C, 1973. The provision of the law provides as follows:-

"482. Saving of inherent powers of High Court.

Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice."

- 21.** Section 482 Cr.P.C, 1973, iterates the inherent power of the Court, which is extraordinary in nature and assiduously to be exercised to prevent the abuse of the process of any Court or otherwise to serve the ends of justice. Naturally such power is very wide. The only deterrent for exercise of the very plentitude of such power would be the

requirement of exercise of similarly great caution, so that the same may not stifle a legitimate prosecution. Time and again it has been held by the constitutional Courts, that exercise of this power, by a Court, should be based on sound principles. The power under Section 482 Cr.P.C, is inherent in the Court to do the right and to undo a wrong in course of administration of justice on the principle "*quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae ess non potest*" (when the law gives a person anything it gives him that without which it cannot exist).

Such power is to be exercised *ex debito justitiae*, to do real and substantial justice and exercise of such power would depend on facts and circumstances of each case.

Therefore the Court should not hesitate and should not make itself handicap in exercising such an extraordinary power in an appropriate case where it is required for the Court to do so in the interest of justice and fair play, to prevent abuse of Courts process and to secure the ends of justice.

- 22.** A fair investigation is a *sine qua non* for a fair trial and thus for the ends of justice. A right to a fair investigation is not only a constitutional right but a natural right as well. Fair investigation is mandated under Articles 14, 21 and also 39 of the Constitution of India. It is a part of Constitutional right guaranteed, hence the minimum requirement of rule of law is that the investigation must be fair, transparent and judicious. Needless to say that while presuming commission of offence by the accused or on the other hand, opining that the charges against him are groundless, the Magistrate has to apply his mind to '*consider*' and evaluate, to the adequate extent and degree, if the evidence *qua* the acquisitions, has been produced before it or not. Statute requires him to

be minded if there are grounds for presuming the offence having been committed by the accused which necessitate that his formulation of opinion as above, includes also that there has been a fair investigation and each and every evidence, *qua* the allegations against the accused has been accumulated, which may found the ground of a just presumption as to the involvement of the accused.

23. Coming back to the facts of the present case, it appears that the FIR has been lodged against the present petitioner under Section 13(2) read with Section 13(1)(e) of the Prevention of Corruption Act, 1988. The allegation is made against him to possess property/money not commensurate with the assets declared by him before the Election Commission. The police have enquired into the matter and after investigation have come to a conclusion that the disproportionate assets of Rs. 6,04,389/- , during the period of 01.01.2001 - 19.08.2011 (herein after referred to as '*check period*') could be found against the present petitioner. Various heads have been mentioned to justify the disparity as claimed to have been found in respect of petitioner's assets. Though it is virtually admitted that petitioner's income as the member of the State Legislative Assembly, is not considered and counted, for the '*check period*'. This is for the reason that no investigation, in this respect has been made by the investigating authority. The allegation against the petitioner is of possessing assets disproportionate to his income and a proper investigation in this case would have required due exploration of all the reasonable sources of income of the petitioner, where *prima facie*, a major failing may be noted. Therefore presumption of guilt of the petitioner is obturated at the very outset due to the qualm relating to the foundational facts of assets *vis-à-vis* income, which reasonably questions the veracity of the *suo moto* FIR and the charge sheet. To answer the question, if a case has been made out in the FIR against the petitioner,

this would lead to a dismissive answer thereof. The documents relied on by the petitioner, particularly the letter of Assistant Secretary of the State Assembly dated 19.05.2015 and 11.12.2015, would suggest receipt of daily allowance by the petitioner during the concerned period, which forms part of his income. In a case of disproportionate asset, the allegations and materials should *prima facie* show lack of proportion between income and the assets to build up a presumption of guilt of the accused person. The said documents which are of unimpeachable characteristics, would occlude an unhindered approach of formulation of presumptive opinion regarding guilt of the accused person so that the Court might proceed to frame charges against him. *Prima facie*, therefore, the actual income of the accused/petitioner has not been brought on record during investigation, on the anvil of which, existence, if any, of the necessary ingredients of offence would have been assessed or tested. There is no justifiable explanation or any argument on behalf of the State as to why the said documents could not be collected during investigation in a case of disproportionate asset, which would otherwise throw sufficient light to the income of the petitioner during the '*check period*'. This has obviously invigorated miscarriage of justice. Misplaced appreciation of the Court as to the materials placed before it, has aimed towards gross abuse of the Court's process, which shall require interference by this Court, to be undone.

- 24.** In absence of the adequate material to show the actual income of the petitioner, the allegation against him appears to be unsubstantiated, even *prima facie*. There is no justification found as to why the income of the petitioner as the member of the State Legislative Assembly has not been enquired into or investigated. The trial Court while rejecting petitioner's prayer under Section 239 of the Cr.P.C, 1973, for discharge has failed to consider this aspect of the matter. Adopting a limited technical approach may defeat the object which the law looks forward to

achieve by empowering the Magistrate, with the unfettered power for 'consideration' of the materials before him, meaning thereby an active consideration as to the adequacy of the materials, to come to the satisfaction that the accused may be presumed to have committed the offence. In other words, the Court would consider if at all any case has been made out against the accused person, to go into trial while 'considering' the materials produced before it. To presume the grounds against the accused person to be available or to form an opinion that charges against the accused are groundless, adequacy of materials collected as to the allegations is necessary to be gone into, while the Magistrate would be applying his mind, to the same. 'Consideration' of the materials with active and due application of the mind, is what is the requirement of law. 'Consideration' of adequacy and sufficiency would also include consideration of inadequacy and insufficiency thereof, to the extent of its acceptability, for presumption of commission of offence by the accused/petitioner.

25. In this case, as discussed earlier, the result of investigation is bereft of adequate evidence collected as to the income of the petitioner, during the '*check period*' and is encumbered with the probability of willful avoidance of the same, as no reasonable ground may be found as to why the investigating authority would not endeavor to collect evidence as to the income of the petitioner, who has been charged with an offence of possessing disproportionate assets. No doubt, the trial Court would have ample power under the law, to introduce a document afresh in the trial. However, the palpable and gross infirmity as regards the foundation of the allegations, would only render abuse of Court's process, if the same is allowed to be tried before a Court. Therefore, in the considered opinion of this Court, the instant is a fit case, in which Court's inherent power under Section 482 Cr.P.C, 1973, must be exercised for substantial justice to be done.

- 26.** Under such circumstances the impugned order of the trial Court cannot stand as lawful and maintainable. Hence, the order dated 24.11.2015, passed by the Special Judge, 1st Court at Alipur, District South 24 Parganas, in case No. 03 of 2013 is set aside.
- 27.** Criminal revision being CRR No. 41 of 2016 is allowed. The present petitioner, who is the accused person in the case being Alipur Police Station Case No. 259/2019 dated 19.08.2011 under Sections 13(1)(e) and 13(2) of the Prevention of Corruption Act, 1988, is discharged from the same and the FIR and orders subsequent there to, are hereby quashed.
- 28.** CRR 41 of 2016 is disposed of.
- 29.** Urgent certified copy of this judgment, if applied for, be given to the parties on usual undertaking.

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(Rai Chattopadhyay, J.)