

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

C.R.R. 574 of 2022

Sisir Kumar Mahato

Versus

The State of West Bengal & Anr.

For the Petitioner : Mr. Aritra Bhattacharya, Adv.
Mr. Suryadipta Bairagya, Adv.

For the State : Ms. Anasuya Sinha, Adv.
Mr. Pinak Kumar Mitra, Adv.

Heard on : 05.01.2024

Judgment on : 19.02.2024

Ajay Kumar Gupta, J:

1. This Criminal Revisional Application has been filed by the petitioner under Sections 397/401 read with Section 482 of the Code of Criminal Procedure, 1973 seeking quashing of the proceeding of

G.R. Case No. 891/2021 arising out of Purulia (Town) Police Station Case No. 108/2021 dated 25th June, 2021 under Sections 217/221/222/223/225A/225B/119/174/177 of the Indian Penal Code and the order dated 08.12.2021 passed by the Learned Chief Judicial Magistrate, Purulia.

2. The brief facts are relevant for the purpose of disposal of this case as under:

On 25th June, 2021, Learned Principal Magistrate, Juvenile Justice Board, District- Purulia lodged an FIR alleging that the petitioner did not comply with the judgment and order passed by the Juvenile Justice Board. A juvenile in conflict with law (JCL) found guilty and was directed to undergo community service under the direct supervision of the District Child Protection Officer (DCPO), Purulia for 3 years from the expiry of the date of appeal period in connection with a proceeding being JGR Case No. 27/2011 arising out of Purulia (M) Police Station Case No. 121/2011 dated 12.07.2011 under Sections 302/34 of the Indian Penal Code. The petitioner did not follow the said order and neither filed report regarding complying such order nor had the juvenile undertaken

community service. The contents of the FIR are set forth inter alia as hereunder: -

“A juvenile in conflict with law for an allegation under section 302 read with 34 IPC in connection with JGR Case no. 27 of 2011 arising out of Purulia (M) PS Case No. 121 of 2011 Dated 12.07.2011 u/s-302/34 IPC was found guilty vide Judgement dated 19.03.2021 pronounced by the Juvenile Justice Board, Purulia. In the said Judgement the JCL was ordered to undergo community service under the direct supervision of the District Child Protection Officer, Purulia for 3 years from the expiry of the date of appeal. The JCL did not prefer any appeal and after the expiry of the appeal period, surrenders before the Board and expressed his willingness to undergo community service and accordingly another order was passed on 19.04.2021 by the Juvenile Justice Board, Purulia in this regard giving directions upon the District Child Protection Officer. He was also directed to submit a detailed report as to the nature and place of community service to be given to the JCL. However, the said report never

reached the Board's end. Ms. Amita Mishra, the Social Worker Member, Juvenile Justice Board, Purulia repeatedly visited District Child Protection Officer physically and enquired about the whereabouts of the JCL but he never gave her any concrete answer not any written communication has ever reached the Board from his end. After that since 01.05.2021 to 16.05.2021 there was vacation in JJB, Purulia and as I myself became COVID-19 Positive and resumed my service from 15.06.2021, the matter could not be looked into neither the District Child Protection Officer bothered to abide by the Judgement passed by a Judicial authority during this period. After my joining, on enquiry when I came to know about the stagnant situation, I asked for the personal appearance of the concerned officer and only then after appearing before the Juvenile Justice Board, Purulia on 24.06.2021, he disclosed, to the utter astonishment of the Juvenile Justice Board, Purulia, that he set the JCL free to go to Jamshedpur under State – Jharkhand where he was working prior to coming into effect of this judgement which is not only beyond the jurisdiction of this Board but the entire State of West

Bengal. As the District Child Protection Officer is a public servant and he was given some public duties to carry out by dint of a judgement, another opportunity was again given to him and he was directed to file written show-cause on 25.06.2021 within 11.00 am justifying all his illegal acts. He appeared before the Board on the due date and time but unfortunately, furnished an altogether false and vexatious show-cause reply stating that he arranged for the community service of the JCL at Synergy Power Equipment Private Limited under the State of Jharkhand. The JCL also appears before the Board and states that on 19.04.2021 he went to the office of the District Child Protection Officer, Purulia as per the direction of the Board and there, District Child Protection Officer, Purulia directed him to go to his home. The JCL also stated before the Board in writing that he was working in Synergy Power Equipment Private Limited under the State of Jharkhand for past 9 years.

Therefore, Sri Sisir Kumar Mahato, District Child Protection Officer, Purulia while discharging his duty in his official capacity as a public servant was duty bound

to keep the JCL under his supervision or custody by order of the JJB, Purulia and he acted completely opposite and aided the JCL who was sentenced to undergo certain community service for an offence u/s- 302/34 IPC to escape his lawful supervision beyond the jurisdiction of the Juvenile Justice Board, Purulia without its knowledge and permission; over and above furnished false information before the Juvenile Justice Board, Purulia and thus committed an offence punishable under section 217/221/222/223/225A/225B read with 119/174/177 of IPC ”.

Resulted an FIR being Purulia (Town) Police Station Case No. 108/2021 dated 25.06.2021 Under Sections 217/221/222/223/225A/225B/119/174/177 of the Indian Penal Code and finally a charge sheet No.188/2021 dated 30.11.2021 under Section 217/221/222/223/225A/225B/119/174/177 of Indian Penal Code has been submitted against the Petitioner/accused. The Learned Court below thereby took cognizance against the accused, Sri Sisir Kumar Mahato, Petitioner herein on 08.12.2021.

3. Under the above facts and circumstances, petitioner has filed this case and same has come up before this Bench for disposal.

SUBMISSION ON BEHALF OF THE PETITIONER:

4. Learned Advocate appearing on behalf of the Petitioner submitted after completion of purported investigation, the investigating agency submitted a final report vide Charge Sheet No. 188/2021 dated 30.11.2021 under Sections 217/221/222/223/225A/225B/119/174/177 of the IPC against the petitioner though the petitioner had submitted a detailed report vide Memo No. 179 – DCPU – PRL dated 19.04.2021 in compliance with the order dated 19.04.2021 passed by the learned Juvenile Justice Board stating all the entire facts and circumstances and nature of community service which was given to the Juvenile in conflict with law and in such situation initiation of case against the petitioner is abuse of process of law as such same is liable to be quashed.

5. It is further submitted that the Principal Magistrate after resuming in service was pleased to direct the petitioner to appear before the Board personally and on appearing personally, the

petitioner had stated he had not set the said JCL free to go but on contrary, the petitioner had submitted another report being Memo No. 246/DCPU/PRL dated 24th June, 2021 thereby it has been clearly mentioned that the petitioner on verbal discussion with few NGOs decided to send to Manipur Leprosy Rehabilitation Centre, Adra, Purulia for community services but the Board did not consider his report rather initiated frivolous proceeding against the Petitioner.

6. It is further submitted that the petitioner had never disobeyed the direction of the JJ Board with intention to save person from punishment. Furthermore, no offence as alleged against the petitioner was disclosed specifically and general averments are made in the said complaint, which does not fulfil the ingredients for an offence punishable under Sections 217/221/222/223/225A/225B/119/174/177 of the IPC. As such, the proceeding initiated against the petitioner is tantamount to abuse of process of law. The petitioner had also filed his show cause reply before the Learned Juvenile Justice Board, Purulia but the said show-cause was not accepted. On contrary, a complaint lodged against him though he is totally innocent and there was no intention to disobey the order of the learned JJ Board as such the entire

proceeding is required to be quashed to ensure the end of justice otherwise petitioner would suffer and highly prejudice.

SUBMISSION ON BEHALF OF THE STATE:

7. On the other hand, learned counsel appearing on behalf of the State produced the case diary and further vehemently argued that the petitioner being the District Child Protection Officer intentionally or negligently performed his duties though there was a specific judgment pronounced by the learned Juvenile Justice Board that the JCL found guilty and he was ordered to under community service under the direct supervision of the District Child Protection Officer, Purulia for 3 years from the expiry of the date of appeal period. The judgment was pronounced by the learned Juvenile Justice Board, Purulia on 19.03.2021 in connection with JGR Case no. 27 of 2011 arising out of Purulia (M) PS Case No. 121 of 2011 Dated 12.07.2011 u/s-302/34 IPC. The JCL did not prefer any appeal and after expiry of appeal period, the JCL surrendered before the Board and expressed his willingness to undergo community service and accordingly, another order was passed on 19.04.2021 by the Juvenile Justice Board, Purulia giving direction upon the District Child Protection Officer to submit a detailed report as to the nature

and place of community service to be given to the JCL. Such report was never reached before the Court from his end though one Social Worker Member, Juvenile Justice Board, Purulia repeatedly visited District Child Protection Officer and personally enquired about the whereabouts of the JCL but he never gave any concrete answer. Not only that no any written communication has ever reached to the Board from his end. The Principal Magistrate was absent on and from 01.05.2021 to 16.05.2021 owing to suffering from COVID-19 Positive and the Magistrate resumed his service on and from 15.06.2021 and finally reveals the JCL was working as electrician in a private company, namely, Synergy Power Equipment Private Limited under the State of Jharkhand i.e. totally violation of Judgment and Order of J.J. Board resulted in lodging FIR and finally after completion of investigation a charge sheet has been submitted against the Petitioner under Section 217/221/222/223/225A/225B/119/174/177 of Indian Penal Code as such there is no scope to interfere with the proceeding, accordingly, Criminal Revisional Application is liable to be dismissed.

DISCUSSION AND FINDINGS:

8. Heard the rival submissions of the parties and on perusal of the materials available in the case diary as well as record, it appears a Juvenile Justice Board, Purulia had pronounced a judgment in connection with JGR Case No. 27/2011 arising out of Purulia (M) Police Station Case No. 121/2011 dated 12.07.2011 under Sections 302/34 of the Indian Penal Code on 19.03.2021 and found JCL guilty of the alleged offences and finally directed to undergo community service for a period of three years from the date of expiry of the appeal period under the supervision of District Child Protection Officer, Purulia. The District Child Protection officer, Purulia is further directed to submit follow up reports before the JJBoard in respect of the progress made by the JCL on interval of every three months and also directed to keep utmost secrecy of the identity of the JCL so that he may not become vulnerable in the Society. The said JCL did not prefer any appeal within the expiry of appeal period. He surrendered before the Board expressing his willingness to undergo community service and accordingly, a date was fixed on 19.04.2021 by the Juvenile Justice Board, Purulia with a direction upon the District Child Protection Officer, Purulia to submit a detailed report as to the nature and place of community service to be given to the JCL but the

said report was not reached to the JJ Board rather the District Child Protection Officer, Purulia informed the Board that the JCL is already working as electrician in a private company namely, Synergy Power Equipment Private Limited at regd. Office , Road#17, Jawaharnagar, Mango, Jamsedpur -831020 within the State of Jharkhand without prior permission and information to the Board and further justified the same which appears prima facie non- compliance of the order of the Juvenile Justice Board.

9. Subsequently, on 24.06.2021 Petitioner informed the Principal Magistrate, JJ Board, Purulia the name of Manipur Leprosy Rehabilitation Centre, Adra, Purulia for community services. The Board has already gathered information from the JCL. Who stated he was allowed to go to Jamshedpur within the State of Jharkhand i.e. outside the Jurisdiction of the West Bengal and started working in Synergy Power Equipment Private Limited though there was a specific direction that after expiry of appeal period JCL would serve community service for 3 years under the supervision of District Child Protection Officer but District Child Protection Officer being the public servant allowed him to go outside the jurisdiction of J.J. Board and do some other work as labour on payment basis without any

information to the JJBoard. In spite of giving opportunity to show cause, District Child Protection Officer did not satisfy the Juvenile Justice Board and vide his show cause reply dated 24.06.2021 informed JCL may be sent to Manipur Leprosy Rehabilitation Centre, Adra, Purulia for community service in response to the order dated 19.04.2021 that is after long period. He further informed the JJBoard that the General Secretary of Manipur Leprosy Rehabilitation Centre has also agree to keep the JCL though he had arranged or allowed the JCL for private job at Synergy Power Equipment Private Limited under the State of Jharkhand without informing the Juvenile Justice Board, which is patently illegal and against the order of JJ Board. He further escaped his lawful supervision beyond the jurisdiction of Juvenile Justice Board, Purulia. Even during investigation, the IO has collected the sufficient material evidence to establish prima facie case against the present petitioner under Sections 217/221/222/223/225A/225B/119/174 /177 of the IPC as reveals from the statements of the witnesses and documents available in the case diary particularly labour attendance register of the aforesaid company that the JCL was working as a labour till 24.06.2021, his labour attendance register was seized by the investigating officer from the said company. In the instant case, there are prima facie sufficient materials in the case diary against the petitioner/accused person. It

is for the prosecution to substantiate the allegations by evidence at a later stage in trial.

10. In the light of above discussion, this Court does not find any sufficient reasons or cogent grounds to quash the proceeding initiated against the present petitioner wherein a charge sheet has already been filed upon conclusion of investigation and cognizance was taken against the petitioner as such Petitioner herein failed to establish proceeding is frivolous or vexatious or abuse of process of law. Thus, application has devoid of merits.

11. We should not forget about the observation made by the Hon'ble Supreme Court in *Paramjeet Batra v. State of Uttrakhand* reported in (2013)11 SCC 673 wherein it has been held:

“While exercising its jurisdiction under Section 482 of the Code the High Court has to be cautious. This power is to be used sparingly and only for the purpose of preventing abuse of the process of any court or otherwise to secure ends of justice. Whether a complaint discloses a criminal offence

or not depends upon the nature of facts alleged therein. Whether essential ingredients of criminal offence are present or not has to be judged by the High court....”

12. Consequently, **C.R.R. 574 of 2022** is, thus, dismissed without order as to costs. CD is to be returned.

13. Interim order, if any, stands vacated.

14. Let a copy of this judgment and order be sent to the learned Court below for information.

15. Parties shall act on the server copies of this order uploaded on the website of this Court.

16. Urgent photostat certified copy of this judgment, if applied for, is to be given as expeditiously to the parties on compliance of all formalities.

(Ajay Kumar Gupta, J)