

44. 06.08
sg 2024
Ct. No.
237.

C.R.R. 735 of 2022

Amitava Rath
Vs.
State of West Bengal & Ors.

Mr. Sandipan Ganguly,
Mr. Somopriyo Chowdhury,
Mr. Matri Prasad Das,
Mr. Aayush Lakhohita,

.... For the petitioner.

Mr. Ronobir Roy Chowdhury,
Mr. Mainak Gupta,

....For the State.

This is an application where petitioner has prayed for quashing of the proceeding being G.R. Case No. 189 of 2022 presently pending before the learned Chief Judicial Magistrate, Jhargram corresponding to Jhargram Police Station case no. 63 of 2022 dated 27th February, 2022 under Sections 188,186,171C, 171D and 506 of the Indian Penal Code.

It is submitted on behalf of the petitioner that the petitioner is a journalist. It is alleged that on 27.02.2022 while the petitioner was covering news at different polling booths in the course of Jhargram Municipal Election, they came to know about a skirmish between supporters and candidates of rival political parties in a particular polling booth. Petitioner reached the spot and covered the said news. For such reporting opposite party no. 2 lodged suo moto complaint making absolutely false, frivolous and absurd allegation that he was performing supervision of election duty and was trying to influence the general public in favour of one political party and did not clear up the area in spite of order by the opposite party.

Such allegation is palpably false allegation and inherently improbable and has been filed with a mala fide intention. The entire F.I.R even if taken at its face value it does not constitute ingredients of the offence and does not make out any case against the accused person. He further submits that it is inherently improbable that a journalist who had gone there to cover news for his media would propagate for a particular political party and no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused person. In fact, the proceeding has been initiated with ulterior motive for wrecking vengeance on the accused person with a view to spite him due to grudges.

He further submits that the allegations made in the F.I.R. does not constitute any offence under Sections 188/186 or 171C or 170D or 506 of the Indian Penal Code. He further submits that the initiation of the present criminal proceeding has resulted in abridgement of the fundamental right of the petitioner to speech and expression protected under Article 19(1)(a) read with Article 19(1)(g) of the Constitution of India. Accordingly he has prayed for quashing the aforesaid proceeding.

Mr. Roy Chowdhury, learned Counsel appearing on behalf of the State placed the Case Diary and he submits that there are procedural irregularities in initiating the present criminal case and as such the instant criminal proceeding is not maintainable in the eye of law.

I have considered submissions made by both the parties the petitioner/accused persons have been booked under Sections 188/186/171C/171D and 506 of the Indian Penal Code out of which

Section 188 and Section 171D Part –II are cognizable and others are non-cognizable offence. However, in order to initiate proceeding under Section 188 the public officer is to lodge a complaint under Section 195(1)(a)(i) of Criminal Procedure Code to the Court and the term ‘complaint’ has been defined in Section 2(d) of the Court which does not include a police report and so far as committing offence under Section 171D Part-II is concerned it’s punishment deals with under Section 171F of the Indian Penal Code. Now the second part of 171F which is a cognizable offence deals with personation. The contents of FIR and the materials in the Case Diary does not disclose any allegation of personation against the petitioner.

In such view of the matter it appears that allegations leveled against the present petitioner under Section 171C, Section 186 and Section 506 are all non-cognizable and Section 188 though cognizable but it is required to be initiated complying Section 195(1)(a)(i) of the Criminal Procedure Code. It is needless to reiterate that the provision under Section 195(1)(a)(i) is mandatory and even conviction can be set aside if no proper complaint has been filed.

Since in the present context proceeding under Section 188 of IPC has been initiated without a regular complaint and for which Court cannot take cognizance of offence under Section 188 of Indian Penal Code and since no case has been made out under Section 171E (part II) of the Indian Penal Code, I find further continuance of present proceeding will be an abuse of the process of the Court.

In such view of the matter CRR 735 of 2022 is allowed.

The instant proceeding being G.R. Case No.189 of 2022 presently pending before the learned Chief Judicial Magistrate,

Jhargram, corresponding to Jhargram Police Station Case No. 63 of 2022 dated 27th February, 2022 is hereby quashed.

Urgent Photostat certified copy of this order, if applied for, be given to the learned Advocates for the respective parties on the usual undertakings.

(Ajoy Kumar Mukherjee, J.)