

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.R. 673 of 2011

Kazi Ezahar & Anr.

-Vs-

The State of West Bengal

For the Petitioners : Mr. Himangshu De
Mr. Navanil De
Mr. Rajeshwar Chakraborty

For the State : Mr. Avishek Sinha

Heard on : 12.10.2023, 14.12.2023, 06.03.2024, 12.06.2024

Judgment on : 14.08.2024

Ananya Bandyopadhyay, J.:-

1. The instant revisional application has been filed by the petitioners for quashing of the proceedings in connection with Karandighi Police Station Case No. 152 of 2007 dated June 23rd, 2007 under Sections 379/411/413/414 of the Indian Penal Code giving rise to G.R. Case No. 570 of 2007 and Sessions Case No. 178 of 2009 pending before the Court of the Learned Fast Tract 1st Court, Islampur, Uttar Dinajpur.
2. The petitioner No. 1 and 2 have been the siblings. The petitioner No. 1 was the owner of the offending vehicle, i.e., a truck bearing police registration number WB-63/7365. The petitioner No. 2 looked after the business of the petitioner No. 1. The petitioner No. 3 was the driver of the aforesaid vehicle.

3. The petitioners were arraigned as accused persons in connection with Karandighi Police Station Case No. 152 of 2007 dated June 23, 2007 under Sections 379/411/413/414 of the Indian Penal Code giving rise to G.R Case No. 570 of 2007 and Sessions Case No. 178 of 2009.
4. After completion of the investigation, the investigating agency submitted charge-sheet against the present petitioners before the Learned Court below vide charge-sheet No. 285 dated October 30th, 2007 under Sections 379/411/413/414 of the Indian Penal Code.
5. On September 24, 2007, the Investigating Officer of the instant case filed a report in respect of the seized vehicle as well as in respect of the seized coal.
6. On October 15th, 2007, the Trial Court returned the vehicle along with seized coal to the petitioner No. 1 on a bond of Rupees 2 Lakhs with a direction not to change the nature and character of the vehicle.
7. Learned Advocate for the petitioners submitted that:-
 - i. The entire coal as well as the truck had been returned to the petitioner No. 1 which clearly depicted that the articles as well as the truck were not stolen article and as such Section 379 of the Indian Penal Code had no application in the instant case in any manner whatsoever.
 - ii. Section 411 of the Indian Penal Code dealt with dishonestly receiving stolen property. A property which at the face of the record showed the same to be not stolen goods/articles. Section 411 of the Indian Penal Code was not attracted.

- iii. The investigating agency could not show the petitioners dealt with stolen properties and no other case was pending against them on the self same allegations or any other allegation. As such the impugned proceeding under Section 413 of the Indian Penal Code was an utter misuse of the process of law and as such the impugned proceeding was liable to be interfered with.
- iv. Section 414 of the Indian Penal had no application in the instant case as the truck was plying with valid papers of the coal and as such none of the accused persons had tried to or acted in concealment of a property alleged to be a stolen one.

8. It was further argued that:-

- i. Question of Section 379 Indian Penal Code or any of the Sections were not attracted so far as the present case was concerned. The question of receiving of stolen property under Section 411 of the Indian Penal Code did not arise when there was a genuine Road Challan and Cash Memo dated June 22nd, 2007 of M/s. Upadhyay Trading Company. There was no document to show that the petitioners habitually dealt in stolen property as contemplated in Section 413 of the Indian Penal Code. The allegations contained in the FIR and in the connected papers did not make out any offence as envisaged under Section 414 of the Indian Penal Code as the petitioners were not involved in assisting in concealment of stolen property. The allegations were vague, bald and baseless and the present case was started with an oblique motive.

ii. It was a case of 2007 and after 16 years, no fruitful purpose could be served in continuing with the proceedings under reference. When the chance of conviction was bleak, the continuation of the proceedings was a gross abuse of the process of the Court and relied on the decisions cited in *Madhavrao Jiwajirao Scindia and Ors. V. Sambhajirao Chandrojirao Angre and Ors. - (1988) 1 SCC 692*, *Ashok Chaturvedi and Ors. V. Shitul H Chanchani & Anr. 1998 C Cr LR (SC) 402* and *Shri Bhaskar Chatteraj V. The State of West Bengal -1991 C Cr LR (SC) 7*.

iii. Hence, the impugned proceeding was liable to be quashed.

9. Considered the rival contentions of the Learned Advocate for the State.

10. The Learned Advocate for the State referred to the relevant pages on the case diary reflecting the statements of the witnesses, seizure list, charge-sheet etc. and stressed the premature stage, the proceedings should not be interfered with.

11. The petitioners stated that on June 23rd, 2007, one S.I. Ajay Bhattacharjee intercepted a truck loaded with raw steam coal. Subsequently, the following articles were seized by the complainant:

- i. Truck with coal weighing 21.92 bearing Registration No. WB-53/7365
- ii. RC Book of the truck
- iii. Insurance Certificate valid upto December 06, 2007
- iv. Renewal Receipt of D.L.

- v. Road Challan and Cash Memo dated June 22, 2007 of M/s. Upadhyay Trading Company
 - vi. Loading advice Road Challan cum coal bill of E.C.L.
 - vii. Permit of vehicle valid upto December 11, 2010.
12. The documents mentioned by the Learned Advocate for the petitioner require to undergo the test of veracity to prove its genuineness through the process of trial since this Court cannot at this juncture act as a Trial Court and consider the referred documents such as truck with coal weighing 21.92 bearing Registration No. WB- 53/7365, RC Book of the truck, Insurance Certificate valid up to December 06, 2007, Renewal Receipt of D.L., Road Challan and Cash Memo dated June 22, 2007 of M/s. Upadhyay Trading Company, Loading advice Road Challan cum coal bill of E.C.L. and permit of vehicle valid upto December 11, 2010 to be unimpeachable.
13. The charge-sheet filed by the Investigating Officer based on the preliminary statements of the witnesses constitute a prima facie case under the alleged offences. The complaint and the subsequent F.I.R. reflected instances to comprise cognizable offences and the proceedings cannot be quashed at this nascent stage. The allegations are serious in nature. The petitioners have the scope to agitate their issues before the Learned Trial Court with regard to the genuineness of the seized documents and articles.
14. 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

¹ 1992 SCC(Cri) 426

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 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.”

15. In view of the above, the instant criminal revisional application being CRR 673 of 2011 is dismissed.

16. There is no order to costs.

17. Department is directed to return the case diary forthwith.

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.)