

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Jay Sengupta

WPA 3604 of 2014
Mrinal Roy
Versus
The State of West Bengal & Ors.

For the petitioner : Mr. Partha Ghosh
Mr. Amal Kumar Dutta
Mr. Simran Sureka
Mr. Debashis Das
.....Advocates

For the State : Mr. Sk. Md. Galib
Mr. K.M. Hossain
.....Advocates

Heard lastly on : 19.09.2023

Judgment on : 02.02.2024

Jay Sengupta, J:

1. This is an application praying for declaring an arrest illegal, claiming compensation and taking action against the erring personnel.
2. Mr. Ghosh, learned Counsel for the petitioner, submits as follows. The petitioner was posted at Block Youth Office Coochbehar-2 as Block Youth

Officer. He was arrested in connection with Mathabhanga Police Station Case no.460/13 dated 15.11.2013 under Sections 3, 4, W.B.G & P/C Act along with others. The petitioner along with other accused were produced before the Learned Additional Chief Judicial Magistrate, Mathabhanga on 16.11.2013. He along with others prayed for bail. The police prayed for their judicial custody. Their application for bail was rejected on 16.11.2013. The petitioner along with others again moved an application for bail. But, on the strong objection raised on behalf of the police authority their application of bail was again rejected on 18.11.2013. After rejection of the bail, the petitioner along with others moved for their bail before the Learned Session Judge, Coochbehar vide Cr. Misc No. 1993 of 2013. The bail application came up for hearing on 25.11.2013 and the Learned Court was pleased to allow the application for bail. The illegal detention of the petitioner by the police authority had caused grave injustice and prejudice to the petitioner and hence, the petitioner through his learned Advocate issued a letter 23.12.2013 and prayed for compensation. Under Gambling and Prize Competition Act, nowhere it was stated that the Section 3 and Section 4 of the said Act were non bailable. Sections 3 and 4 were bailable. But, the petitioner was made to suffer for 10 days of judicial custody without any fault of his own. The police authority never sought for any police custody, rather prayed for judicial custody. The illegal custody caused defamation of the petitioner and his family. The police authorities were under an obligation to compensate for the damage caused to the petitioner. The notice under Section 41A of Code was introduced on 01.11.2010. Hence, police did not have jurisdiction to arrest him where punishment was up to three years

even if the same was found to be non-bailable. In spite of several orders for filing affidavit-in-opposition, for the last 10 years no affidavit in opposition was filed. Hence, doctrine of non-traverse would apply. Hence, compensation, disciplinary action against Police and Magistrate ought to be initiated.

3. Mr. Galib, learned Counsel appearing on behalf of the State, submitted as follows. After completion of the investigation, a charge sheet was submitted against all the accused including the owner of the godown vide Charge Sheet No. 10/14 dated 31st November, 2014 under sections 3 and 4 by the Act of 1957 read with section 120B of Indian Penal Code. The case was pending trial before the Learned jurisdictional Magistrate being Trial No. 604 of 2014. Cross examination of the charge sheeted witnesses Sl. Nos. 1, 2, 3, 4 and 8 had been completed. The next date before the Learned Trial Court was fixed on 19th July, 2023 for cross examination of the charge sheet witnesses Sl. Nos. 6, 7 and 9, respectively. In essence, section 3 of the Act of 1957 prescribed rigorous imprisonment for a maximum term which “may extend” to 3 years with a minimum fixed as not “less than” 6 months. In essence, the section 4 prescribed a maximum term of rigorous imprisonment which “may extend” to 3 years with a minimum pegged at “less than” 3 months. The punishments as envisaged under sections 3 and 4 of the Act of 1957 were squarely covered under Part II of the First Schedule to the Code of Criminal Procedure, 1973. From the combined reading of sections 3 and 4 of the Act of 1957 it was amply clear that being the maximum punishment which might “extend to” 3 years as contemplated under sections 3 and 4 of the Act of 1957, the offences were “cognizable”

and “non-bailable” as was envisaged in the second entry of the Part II, First Schedule to the Code. The aforesaid proposition was settled by the Hon’ble Supreme Court by the Judgement reported at (2022) 10 SCC 221. In the said Judgement the Hon’ble Supreme Court, while dealing with section 63 of the Copyright Act that prescribed punishment with imprisonment for a term which shall not be “less than” 6 months, but may “extend to” 3 years, was pleased to hold that it was crystal clear that Part II of the First Schedule to the Code was applicable. A Co-ordinate Bench of this Hon’ble Court in a Judgement reported at (2008) 1 CHN 148 while dealing with similar provision of section 135 (theft of electricity) of the Electricity Act, 2003, it had been held that Part II of the First Schedule of the Code was squarely applicable. It would be pertinent to submit that in a judgement of this Hon’ble Court reported at (1997) 1 CHN 262 it was seen that an accused of an offences under section 3 and 4 of the Act of 1957 obtained an anticipatory bail from a Jurisdictional Court. Anticipatory bail under section 438 of the Code came into question only when any person had reason to believe that he might be arrested on accusation of having committed a non-bailable offence and not otherwise. In essence, section 5 of the Act of 1957 contemplated power of Police to take into custody who, in turn, should be produced before the nearest Magistrate within a period of 24 hours i.e., in consonance with the constitutional mandate of Article 22 (2). In essence, section 14 of the Act of 1957 was in pari materia with the concept of Triable Magistrate as postulated in the second entry of Part II of the First Schedule to the Code. As regards the decision in Arnesh Kumar reported at (2014) 8 SCC 273, the judgement was delivered by the Hon’ble Apex Court on 2nd

July, 2014 whereas the Mathabhanga Police Station Case No. 460 was registered on 15th November, 2013. Moreover, the detention of the Writ Petitioner was by the order of the Learned Jurisdictional Magistrate. There was no issue of any dereliction of duty on the part of the Police/Respondent Authorities. The detention of the Petitioner was by dint of Judicial Orders passed by the Learned Jurisdictional Magistrate on being lawfully forwarded by the Investigating Agency. In view of the above, it was crystal clear that the offences contemplated under sections 3 and 4 of the Act of 1957 were non-bailable and cognizable in nature. Hence, the relief for compensation was not sustainable in law.

4. I heard the learned counsels for the parties and perused the writ petition and the written notices of submission filed on behalf of the parties.

5. Section 3 of the Act of 1957 prescribes rigorous imprisonment for a maximum term which may extend to three years with a minimum fixed as not less than six months. Likewise, Section 4 of the said Act prescribes a maximum term of rigorous imprisonment which may extend to three years with a minimum pegged at less than three months. Therefore, the punishments as envisaged under Sections 3 and 4 of the Act of 1957 are well covered by Part-II of the First Schedule to the Code of Criminal Procedure, 1973. It is abundantly clear that the offences were cognisable and non-bailable as envisaged in Part-II of the First Schedule to the Code as the maximum punishment may extend to three years.

6. As rightly contended on behalf of the State, the above referred proposition finds support in the decisions reported at (2022) 10 SCC 221 and (2008) 1 CHN 148 (Cal).

7. Besides, as the criminal case in question was registered on 15.11.2013 for a prior offence, the guidelines propounded in Arnesh Kumar (supra) on 02.07.2014 would not apply.

8. Therefore, both the police personnel involved as well as the Learned Jurisdictional Magistrate committed no error in taking necessary steps as provided under the law.

9. Therefore, I find no merit in this application.

10. Accordingly, the writ petition is dismissed. However, there shall be no order as to costs.

11. Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Jay Sengupta, J.)