

IN THE HIGH COURT AT CALCUTTA
(Criminal Revisional Jurisdiction)
Appellate Side

Present:

Justice Bibhas Ranjan De

C.R.R. 1194 of 2015

Abdus Salam

Vs.

The State of West Bengal & Anr.

For the Petitioner :Mr. Uday Sankar Chattopadhyay, Adv.
Ms. Trisha Rakshit, Adv.
Ms. Rajashree Tah, Adv.
Mr. Aishwarya Datta, Adv.

For the State :Mr. Debasish Roy, Ld. PP,
Mr. Anand Keshari, Adv.

Heard on :20.09.2023, 29.11.2023,
13.12.2023, 16.01.2024,
07.02.2024

Judgment on :20th March, 2024

Bibhas Ranjan De, J.

1. Quashing of the Charge sheet being no. 1450 of 2012 dated 13.12.2012 under Sections 406/420/120B of the Indian Penal Code (for short IPC) in connection with Berhampore Police Station Case no. 553 of 2012 dated 11.05.2012 and all orders including order dated 16.12.2014 passed by Ld. Judicial Magistrate, 3rd Court, Berhampore in connection with G.R. Case No. 1846 of 2012, has been sought in this revision application.

Brief facts:-

2. Petitioner herein was the Secretary of the Bhakuri Development Society approved by West Bengal Renewable Energy Development Agency (for short W.B.R.E.D.A.) for construction and commissioning of bio gas plant for the poor people of the locality. The complainant/opposite party no. 2 herein is the president of the same society and the witnesses are the present secretary and member of the said society. In the year 2008 & 2009 W.B.R.E.D.A. issued two cheques being no. 326093 dated 10.11.2009 amounting to Rs. 6,30,000/- and another cheque being no. 345817 dated 08.09.2010 amounting to Rs. 3,15,000/- for construction of bio gas plant

and the accused/petitioner herein allegedly misappropriated the said amount instead of depositing the same to the official account of the society being no. C/A-740 maintained at Bangiya Gramin Bikash Bank.

3. The complainant lodged a complaint under Section 156(3) of the Code of Criminal Procedure (for short Cr.P.C.) alleging the same to the Chief Judicial Magistrate (for short CJM), Murshidabad who in turn, forwarded the same to Berhampore Police Station and accordingly Berhampore Police Station Case no. 553 of 2012 dated 11.05.2012 under Sections 406/420/120B of the IPC was started against the petitioner. After investigation charge sheet was submitted on 13.12.2012 under Sections 406/420/120B of the IPC against the petitioner.

4. Ld. CJM Berhampore took cognizance of the offence and transferred the same to the Ld. JM 3rd Court, Berhampore for trial. On 16.12.2014 the Ld. Trial Court framed charge against the petitioner under Section 406 of the IPC.

Argument Advanced:-

5. Ld. Counsel, Mr. Uday Shankar Chattopadhyay, appearing on behalf of the petitioner has seriously contended that allegation of misappropriation is false and concocted. It is submitted that

by no stretch of imagination it can be presumed that cheques issued by the W.B.R.E.D.A. can be deposited in the personal account of the petitioner for withdrawal of money. He has further submitted that petitioner submitted audit report with the Government every year.

6. In support of his contention, he relied on a case of ***Balvir Singh Vs. State of Uttarakhand*** reported in **2023 SCC OnLine SC 1261** and ***Jayanta Saha Vs. State of West Bengal & Anr.*** reported in **2004 SCC OnLine Cal 161**.

7. In opposition to that, Ld. Counsel Mr. Anand Keshari appearing on behalf of the State has submitted that there are sufficient evidences collected during investigation to substantiate the offence alleged in this case. He has drawn my attention to the evidence collected during investigation.

Analysis:-

8. In ***Jayanta Saha*** (supra) the Co-ordinate Bench of this Court came across a complaint lodged by a partner of a partnership firm against another partner of the said firm. Accordingly, Hon'ble Court found no ingredients to constitute offence under Section 406/420 of IPC. So, the principle is not applicable in our case.

9. In **Balvir Singh** (supra) Hon'ble Apex Court dealt with an appeal in a case which ended in conviction under Section 302/498A of IPC. In that case, Hon'ble Court handed down the principle that Section 106 of the Evidence Act cannot be invoked to make up the inability of the prosecution to produce evidence of circumstances pointing to the guilt of the accused. It was held that until a prima facie case is established by such evidence the onus does not shift to the accused on the plea of special knowledge.

10. Observation of the Hon'ble Apex Court in **Balvir Singh** (supra) can only be applied within the course of trial particularly at the time of evaluation of evidence.

11. In the case at hand, petitioner has come before this Court with a prayer for quashing of the proceeding where charge has already been framed by the Trial Court under Section 406 of IPC.

12. From careful scrutiny of the revision application specially paragraph 8, 9 & 10, it clearly points towards the fact that at the relevant point of time petitioner was Secretary of the Society. It is also stated in the application that on verbal request of W.B.R.E.D.A, the society opened an account at Corporation Bank, Salt Lake Branch as there was no core

banking system at Bhakuri. The account was created for speedy completion of work of bio gas plant. It has been admitted that the petitioner along with the treasurer of the said society were the joint operators of the bank at the relevant point of time.

13. Virtually, averments of the revision application further ratified that cheques issued by W.B.R.E.D.A had not been deposited in the official account of the Society at Bangiya Gramin Bikash Bank.

14. The general and consistent law laid down by the Hon'ble Apex Court is as follows:-

- The inherent power of the High Court under Section 482 of Cr.P.C. for quashing has to be exercised sparingly with circumspection and in the rarest of the rare cases.
- Exercise of inherent power under Section 482 of the Cr.P.C. is not the rule but it is an exception. The exception is applied only when it is brought to the notice of the Court that grave miscarriage of Justice would be committed if the trial is allowed to proceed where the accused would be harassed unnecessarily if the trial is allowed to linger when prima facie it appears to court that the trial would likely be ended in acquittal.

- The High Court in exercise of its jurisdiction under Section 482 of Code does not function either as a court of appeal or revision, and it was held and envisaged that three circumstances under which the inherent jurisdiction may be exercised namely,

- a. to give effect to an order under the code,
- b. to prevent abuse of process of the Court, and
- c. to otherwise secure the ends of justice.

15. After giving thoughtful consideration to the written complaint together with the evidence collected during investigation, I am of the opinion, that the issue raised in this case can only be sorted out through trial and appreciation of evidence. Naturally, I am unable to function as an Appellate Court to appreciate the evidence. Accordingly, I am also unable to hold at this nascent stage of trial that it would likely be ended in acquittal.

16. In the aforesaid view of the matter the instant revision application, devoid of merits, is liable to be dismissed.

17. As a sequel, the revision application being no. CRR 1194 of 2015 stands dismissed.

18. Case diary be returned.

- 19.** Connected applications, if there be any, stand disposed of accordingly.
- 20.** Interim order, if there be any, also stands vacated.
- 21.** All parties to this revisional application shall act on the server copy of this order downloaded from the official website of this Court.
- 22.** Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]