

26.09
2024
I.No.66
Ct. No.
237.
sg

C.R.R. 3358 of 2022

**Sultan Mia
Vs.
The State of West Bengal & Anr.**

Mr. Aniket Mitra
Mr. S. Saha
Ms. Nandini Chatterjee

.... For the petitioner.

Mr. Sudip Kumar, Ld. APP.
Mr. Subhasish Datta

....For the State.

This is an application wherein petitioner has prayed for quashing of the proceedings of G.R. Case no. 1698 of 2013 arising out of Gazole P.S. case no. 241 of 2013 dated 14th June, 2013 presently pending before the Chief Judicial Magistrate, Malda. Petitioner contended that the opposite party no.2 herein made a complain before the Gazole P.S. that on 13th June, 2013, three co-accused persons (who are not petitioners herein), were writing posters for the purpose of promotion of their party candidate for the Panchayet Election, on the wall of the house of Yogeswar Karmakar, without their consent. At that time Yogeswar's wife spotted them and asked them not to write on the wall but the said trio did not listen to her. At the evening Yogeswar washed the wall and as a result the said persons physically assaulted Yogeswar and threatened to kill him.

It is further alleged in the FIR that on 14th June, 2019 at around 12 P.M. Yogeswar along with others went to the police station and made a complaint, which was diarised being Diary No.

603/13. After lodging diary, while Yogeswar was returning home, FIR named accused persons, including the present petitioner attacked him in a pre-planned manner with iron rod, sharp weapons and other arms, which resulted in a huge chaos. After hearing such hue and cry defacto complainant's father Kalimuddin Sarkar went to the spot, when the accused persons named in the FIR physically assaulted Kalimuddin on his forehead with sharp weapons and iron rods, and as a result of which he died on his way to hospital. The other persons, who came to his rescue, were also suffered injuries.

Petitioner submits that petitioner was granted anticipatory bail by this High Court considering extent of his complicity. In fact, petitioner was not at all involved with the alleged incident that took place on 14th June, 2013. He is completely innocent person and he has been falsely implicated out of grudge, malice and with an intention to take political revenge. He further submits, no specific role has been attributed against the present petitioner either in the FIR or in the statements recorded under Section 161 of Cr.P.C. However, investigating authority after making a perfunctory investigation has submitted charge sheet against the petitioner along with other accused persons and the learned Court below without applying his judicial mind has taken cognizance upon the said offence. He further added that the entire complaint's case is based on hearsay evidence and Section 302 of IPC has got no manner of application in the present context, as the allegation against petitioner does not disclose offence of culpable homicide amounting to murder. Accordingly petitioner has prayed for quashing the proceeding, qua petitioner herein.

Opposite party no.2 is represented and supported prosecution case.

Learned Counsel appearing on behalf of the State placed the Case Diary and submits that there are sufficient incriminating materials against the present petitioner. The prosecution during investigation has recorded statement of material witnesses, where the name of the present petitioner has transpired in most of the statements. He further submits that extent of complicity will come out only after trial and this is not the stage to quash the proceeding, without giving opportunity to the prosecution to prove their case, when as many as the name of 21 witnesses have been cited in the charge sheet, who needs to be examined and considering the gravity of the offence and also the role played by the present petitioner in connection with the said offence, the petitioner's prayer for quashing the proceeding should be rejected.

I have considered submissions made by both the parties and also perused the materials in the case diary including statement recorded under Section 161 Cr.P.C. and the post-mortem report.

Therefore the short question for consideration of this case is that whether in the fact and circumstances of this case, the petitioner, who is one of the charge sheeted co-accused and against whom, trial is about to commence, is entitled to be discharged from this case nor not.

It is settled law that quashing of proceeding under Section 482 of the Code applies 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 and where accused would be harassed

unnecessarily, if the trial is allowed to linger, specially when prima facie it appears to Court that the trial would be likely to be ended in acquittal. In other words, the inherent power of the Court can be invoked either to prevent abuse of process of any Court or otherwise to secure the ends of justice. At this stage this Court is not supposed to embark upon an inquiry as to the reliability or genuineness of the documents available in the record.

There are materials in record to indicate complicity of the petitioner with the alleged offence. The allegation that out of political vengeance, present proceeding has been initiated is of no consequence at this stage and cannot by itself be the basis for quashing the proceeding. It is well settled proposition, that a criminal proceeding if otherwise justifiable and based upon adequate evidence does not become vitiated merely on account of mala fides or political vendetta of the complaint.

In such view of the matter, I find that this is not a fit case where the petitioner's prayer for quashing the said proceeding can be allowed.

Thus, CRR 3358 of 2022 stands disposed of.

However, this disposal of the order will not preclude the petitioner to agitate all his grievances made herein at the time of framing of charge before the Trial Court.

Urgent zerox certified copy of this order, if applied for, be supplied to the parties upon compliance of all legal formalities.

(Ajoy Kumar Mukherjee, J.)