IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.R. 3810 of 2011

Vikash Khemka
-Vs-
The State of West Bengal & Anr.

For the Petitioner (Amicus Curiae)	: Mr. Shounak Mondal
For the State	: Mr. Bidyut Roy Ms. Rita Dutta
Heard on	: 18.12.2023, 20.02.2024, 08.03.2024, 14.06.2024
Judgment on	: 16.08.2024

Ananya Bandyopadhyay, J.:-

1. The instant revisional application has been filed by the petitioner for quashing of a charge-sheet pending in the Court of Learned 5th Metropolitan Magistrate at Calcutta in connection with G.R. No. 2068 of 2009 corresponding to Hare Street P.S. Case No. 450 dated 20.08.2009 for commission of offences punishable under Sections 420/408/477A/120B of the Indian Penal Code.

2. The grievances of the petitioner are denoted as follows:-

    i. Petitioner had been falsely implicated in the instant case on the basis of various false and fabricated allegations as alleged in the petition of complaint, which prima facie did not constitute any offence.

ii. The First Information Report apparently suffered from suppression as well as distortion of facts.

iii. The allegations in the complaint narrated sometime before June 2009 the accused persons in conspiracy amongst themselves induced the de-facto complainant to deliver "Tea" aggregating to a price of Rs.3 crores to various parties and after receiving the money from such parties appropriated such receipts in the name of other parties who in-fact did not make payment. The accused person thus misappropriated tea of the de-facto complainant to his financial loss.

iv. On 26.09.2011 the Investigating Officer of the case submitted charge sheet against the two accused persons in the instant case alleging commission under sections 420/408/477A/120B of the Indian Penal Code.

v. In course of the investigation of the said case, the petitioner was never contacted by the Investigating Officer of the case and no documents were either called upon or seized from the possession of the petitioner in connection with the instant case.

vi. The charge-sheet submitted by the Investigating Officer of the case had completely ignored the admitted facts and documents of the de-facto complainant which contradicted the prosecution case.

vii. Allegations made in the charge sheet even if taken on the face value did not disclose any ingredient of the offence of cheating, criminal breach of trust by servant, falsification of accounts or its conspiracy as such the same deserved to be quashed.

viii. The above criminal proceeding could not be allowed to be used as a tool for recovery of the alleged dues of the opposite party no.2, particularly when the civil suit for recovery of dues could be pursued by the opposite party no.2.

ix. The opposite party No.2 attempted to misuse the process of criminal court to cause pressure upon the petitioner and by extorting him to cough-out undue and unjust monies to the opposite party No. 2.

x. The instant case was an abuse of the process of law and the facts disclosed herein smacks of mala-fide.

xi. In the facts of the case it was evident that the instant case was a malicious one and was liable to be quashed.

xii. The facts and circumstances of the instant case as narrated above went to show that the instant F.I.R had been initiated fraudulently and by suppression of material facts and circumstances of the case.

xiii. In view of the aforesaid facts and petitioner could not be compelled to go through and undergo trauma of facing the entire trial of this case.

xiv. The entire length and breadth of the First Information Report followed by the charge-sheet further did not contain any allegation of entrustment of the money to the petitioner nor dishonest misappropriation of the said sums by the petitioner. Petitioner stated and submitted that in absence of any such allegations against the petitioner no case of cheating or of its conspiracy could lie against the petitioner and the entire proceeding against the petitioner was a nullity and abuse of process of law and also was liable to be quashed.

xv. The allegations levelled against the petitioner in the First Information Report were false, fictitious, frivolous, unfounded and had been maliciously levelled against the petitioner.

3. Considered the submissions of the Learned Amicus Curiae filed through a written note as well as the submission of the Learned Advocate for the State.

4. 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 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*

[1] 1992 SCC(Cri) 426

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."*

5. The charge-sheet in the instant case has been submitted along with seized documents which prima facie reflects the role of the present petitioner in the alleged offence to have conspired with the accused no.2 in inducing the complainant's company to deliver huge quantity of tea to different parties worth Rs.3 crores. The sale proceeds was supposed to be deposited in the complainant company's account but the petitioner and the accused no.2 misappropriated the same for their wrongful gain by selling the tea in open market and they received the money with alleged commission of criminal breach of trust and cheating.
6. The allegations are serious in nature which through primary investigation initially coincide with the allegations of the complaint filed under Section 156(3) of the Code of Criminal Procedure, contrary to the submission of the Learned Amicus Curiae that the dispute between the parties is civil in nature. The allegations are far more severe and necessitate the observance of process of trial to unfold the truth.
7. In view of the above discussions, the charge-sheet no. 317 of 2011 pending in the Court of Learned 5th Metropolitan Magistrate at Calcutta in connection with G.R. No. 2068 of 2009 corresponding to Hare Street P.S. Case No. 450

dated 20.08.2009 for commission of offences punishable under Sections 420/408/477A/120B of the Indian Penal Code is quashed.

8. Under such circumstances, the instant criminal revisional application being CRR 3810 of 2011 is dismissed.
9. There is no order as to costs.
10. I record my appreciation for the able assistance rendered by the Learned Amicus Curiae Mr. Shounak Mondal in disposing of this appeal.
11. Let the copy of this judgment be sent to the learned trial court as well as the police station concerned for necessary information and compliance.
12. All parties shall act on the server copy of this judgment duly downloaded from the official website of this court.

(Ananya Bandyopadhyay, J.)