

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.R. 3888 of 2011

Satish Kumar Sharma

-Vs-

The State of West Bengal

For the Petitioner : Mr. Minoti Gomes
Mr. S. Das Mohapatra
Ms. Madhurai Sinha

For the State : Mr. Narayan Prasad Agarwala
Mr. Pratick Bose

Heard on : 19.09.2023, 10.10.2023, 10.01.2024

Judgment on : 14.03.2024

Ananya Bandyopadhyay, J.:-

1. The instant revisional application has been filed by the petitioner for quashing of the proceeding being Dankuni Police Station Case No. 102 of 2009 dated 22.09.2009 under Sections 469/471/419/205/120B/500/506/504 of the Indian Penal Code read with Sections 142/143 of the Railways Act, 1989 (G.R. No. 926 of 2009) and quashing of the Charge-Sheet No. 170 of 2010 dated 09.12.2010 under Sections 469/471/419/195/205/120B/506/504 of the Indian Penal Code read with Sections 142/143 of the Railways Act, 1989.

2. Petitioner was a business man by profession engaged in the business of providing bulk materials handling equipments to Steel Authority of India.
3. Dankuni Police Station Case No. 102 of 2009 dated 22.09.2009 under Sections 469/471/419/205/120B/500/506/504 of the Indian Penal Code read with Sections 142/143 of the Indian Railways Act, 1989 was started on the basis of a written application under Section 156(3) of the Code of Criminal Procedure filed in the Court of the Learned Additional Chief Judicial Magistrate at Serampore, District – Hooghly by one Bijay Kumar Chowdhury of FE-471, Salt Lake City, Sector – III, Kolkata – 700106, West Bengal inter alia, alleging that the complainant had been a businessman, dealing in a partnership business of supplying bulk materials to SAIL at Dankuni, the petitioner alleged that the accused was also in the same business which gave rise to business rivalry and the accused petitioners had falsely implicated in criminal cases. Petitioner's employee purchased train tickets in the name of the complainant and his brother but they never travelled in such train.
4. The impugned Charge-Sheet was void of any material particulars to constitute offence committed by the petitioner and was filed in a perfunctory manner.
5. The said impugned Charge-Sheet filed by S.I. Sk. Azad Hossain it was stated by the said Investigating Officer that *'he visited the place of occurrence, contacted with the complainant, requested him to produce witness, but he failed'*, yet the Charge-Sheet was filed.

6. The Charge-Sheet comprised of contradictory and confusing statements based on a case filed under Section 156(3) of the Code of Criminal Procedure in the Court of Learned Additional Chief Judicial Magistrate, Serampore, the S.I. Sk. Azad Hossain.
7. Learned Advocate for the petitioner submitted that –
 - i. The impugned proceeding was in gross abuse of the process of law which if allowed to continue would degenerate itself into a weapon of harassment and prosecution and as such it was liable to be quashed for the ends of justice.
 - ii. The impugned Charge-Sheet was void of any material of particular offence committed by the petitioner and was filed in a perfunctory manner.
8. The petitioners' contention precisely stated that the complainant filed an application under Section 156(3) of the Code of Criminal Procedure before the Learned Additional Chief Judicial Magistrate, Seramore, Hooghly, owing to several grievances viz:
 - a. The petitioner intended to compete with the complainant, a well-reputed businessman, in terms of business with the Steel Authority of Indian Ltd. (SAIL) at Dankuni.
 - b. Suddenly the complainant learnt about a criminal complaint filed under Section 156(3) Cr.P.C. before the Learned Additional Chief Judicial Magistrate, Roop, Bharatpur and he was interrogated by

Ucchain Police Station for the offence under Section 376/120B of the Penal Code.

- c. The complainant disclosed to have been falsely implicated and as such he filed a discharge petition before the said Learned Additional Chief Judicial Magistrate.
- d. In the meanwhile, the complainant came to know about another case filed before Baldev Police Station, Mathura under Sections 307/504 of the Indian Penal Code.
- e. The complainant moved a writ petition before the Hon'ble High Court, Allahabad Bench and an appropriate direction for investigation was passed. There was also direction to consider the bail prayer of the complainant.
- f. The complainant further alleged that after receiving the documents from the Eastern Railway it was found that the reservation requisition contained his and his brother's name with wrong spelling and wrong address.

Thereafter, the complainant suspected the instant petitioner only on the basis of his wrong spelling and wrong address and lodged the instant complaint resulting into institution of the instant impugned F.I.R.

- i. In the instant case Charge-Sheet had been filed in the year 2010 and the Charge-Sheet revealed that relevant documents to arraign the instant petitioner had not been seized. Since, it was a case relating to documentary evidence and all such documents were in the custody of the

Railway Authority itself, it was difficult to come to a conclusion that the petitioner had been a wrong doer. The purported investigation against the petitioner did not exact seizure of the ticket, booking slip or other documents.

- ii. As per the FIR itself the misdeed was committed by one Sekhar Baleka and not by the petitioner himself. The Paragraph 4 of the application under Section 156 (3), Cr.P.C. disclosed that the ticket was booked by Sekhar Baleka who was working under the instant petitioner. Thereafter, if the allegations were ex facie taken to be true, the liability lay on that person and not on the petitioner.
- iii. Ingredients of Section 142 and 143 of Railways Act had not been fulfilled:

“Section 142 of the Railways Act provides the penalty for transfer of tickets. To constitute offence under this section one being a person other than a railway servant or other than an authorised agent has to (i) sell or attempt to sell any ticket or any half of a return ticket or, (ii) he has to part or attempts to part with possession of a return ticket against with reservation of a seat or berth has been made or any half of a return ticket or a season ticket. In case of purchasing of aforementioned tickets, the purchaser will also be an offender.

- 9. In the instant case the allegation did not come under the purview of section 142 of the Railways Act, so far as the allegations are concerned.
- 10. *Section 143 of the Railways Act provides penalty for unauthorized carrying on of business of producing and supplying of railways tickets. As per this*

section if a person other than a railway servant or any authorised agent (i) runs business of procuring and supplying tickets for travel or from reserved accommodation or (ii) purchases or sells or attempts to purchase or sell tickets with a view to carrying on business.

In the instant case also there was no such purported sell or purchase of railways tickets.

Even if the allegations against the petitioner are taken to be true, those does not attracts the section 142/143 of the Railways Act.”

11. Section 180F of the Railways Act 1989 states as follows:-

“As per the Railways Act 1989, Section 180F deals with the provisions relating to the cognizance of offences. Section 180F goes as follows;

“No court shall take cognizance of an offence mentioned in sub- section (2) of section 179 except on a complaint made by the officer authorized.”

Section 179 of the Railways Act indicates Section 142 and 143 in its sub- section (2) amongst other penal provisions. Therefore, as per section 180F, a court can take cognizance of the offences under Sections 142/143 if and only if the same had been initiated by an authorised officer.

12. *The term "authorised officer" has been defined by the Railways Act in Section 2 (26A) of the Act as "... an officer authorised by the Central Government under sub section (2) of Section 179”.*

13. The Ministry of Railways (Railway Board) vide Notification number S.O. 874 (E) published in the Gazette of India dated 02.08.2004 stated the officers not below the rank of a Group C Officer of the Commercial Department, the Operating Department or the Vigilance Department in the Ministry of Railways were to be the 'Officer Authorised'.
14. In the present case in hand, the complaint had been lodged by the complainant who was a private person and thus no Court can take cognizance of the offences as had been alleged. In fact the case also had been investigated by the state police and not by railway protection force.
15. The Hon'ble High Court of Gujrat in Shah Rukh Khan Vs. State of Gujrat & another¹ has taken a similar view and quashed the impugned proceeding therein.

“As per the FIR and the Charge Sheet the petitioner had done the offences under Sections 469/471/419/205/120B/500/506/504 of the Indian Penal Code.

Section 469 Indian Penal Code prescribed forgery for the purpose of harming reputation. So, harming reputation of a person is the main ingredient of the offence constituted under this section. In the instant case, even if the allegations

¹ Special Criminal Application No. 5404 of 2017 decided on 27.04.2022 (Paragraph 32)

against the petitioner are taken to be true, there was no trace of harming reputation of the complainant.

Section 471 Indian Penal Code deals with the provision of using as genuine a forged document or electronic record. To attract the said Section, a forged document or electronic record should be used as a genuine one. In the instant case however no forged document had been alleged to have been used by the petitioner.

Section 419 of the Indian Penal Code denoted the punishment for cheating by personation. As per Section 416 of the Indian Penal Code 'cheating by personation' specified a situation when one pretended to be another person. Column 10 of the charge sheet or column 16 did not reflect seizure of any filled up form or identity card, nor did it cite any person to have been impersonated.

Section 205 of the Indian Penal Code stated that whoever, falsely personated another and made statements or admission and/ or confession in connection with the Court Proceedings shall be punished with imprisonment of maximum 3 years or with fine. The instant allegations are in no way connected to this Section 205 of the IPC as it states about the false personation for the purpose of Court proceeding or suit.

Moreover, the allegations did not attract Section 500 of the Indian Penal Code as such they are taken prima facie true, they did not defame anybody.

Section 506 of the Indian Penal Code provides for punishment for Criminal Intimidation. In the instant case there was no trace of any threat with injury, caused by the petitioner hereinabove, to the complainant or his person, reputation or property.

Lastly Section 504 Indian Penal Code contains the following ingredients;

- (i) Intentional insult,
- (ii) Provoke another person.

In the instant case none of the facts fulfilled any ingredient have been fulfilled and as such the Section 504 of the Indian Penal Code was also not applicable in the instant case.

16. The Hon'ble Supreme Court in *State of Haryana vs Bhajanlal*², has succinctly laid down that the power under section 482 of the Code of Criminal Procedure, should be used, in the following scenario:-

“(a) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and

² AIR 1992 SC 604

accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;

(b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. 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;

(c) 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;

(d) 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;

(e) 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;

(f) 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:

(g) 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."

In view of such aspect, it is absolutely evident that both the cases against the petitioners completely fall within the ambit and purview of clause (c), (e), (f) and (g) which calls for interference by this Hon'ble in exercise of power under Section 482 of the Code of Criminal Procedure.

17. The Learned Advocate for the State submitted that the investigation has been completed and the charge-sheet has been submitted which prima facie establishes the guilt of the petitioner and the instant police case should not be quashed at such a premature stage.
18. The complainant/opposite party claimed, on receipt of the documents from the Eastern Railway, he learnt that the reservation requisition was sought to be issued in his name as well as his brother's name with wrong spelling and wrong address. Wrong spelling of a name and wrong address of such names cannot cause prejudice to the de facto complainant and his brother since

such spelling and addresses will not identify the de facto complainant and his brother in terms of their identity as well as place of residence.

19. The instant complaint had been lodged without complying with the provisions of Section 142 and 143 of the Railways Acts since there was a purchase of a railway ticket and not to sell or an attempt to sell the same or to part or attempt to part with the possession of a return ticket.
20. Moreover the petitioners were not claimed to be involved in a business of unauthorizedly producing or supplying of railway tickets. The statements recorded under Section 161 of the Code of Criminal Procedure revealed that a fake railway ticket was purchased in the name of the de facto complainant by the petitioner Satish Kumar Sharma through his associate Sekhar Dhabalkar. Such statements appeared to be hearsay at the nascent stage since the information was obtained by the de facto complainant through the concerned authority through a communication on the part of the de facto complainant duly replied to the same by the de facto complainant.
21. It was a private communication between the parties which was within the personal knowledge of the de facto complainant until the same was made public by him.
22. If a railway ticket had been purchased by a private party in the name of a party who himself claimed that his name had been wrongly spelt with a wrong address, it is weird that he should on his own accord attribute himself to have been targeted on the basis of a suspicion in absence of an averment to have been actually prejudiced apart from vague and unfounded suspicion.

23. The allegations in the complaint are vague and shall not be able to be proved before a Court of law in absence of documentary evidence since the charge-sheet submitted by the appellants did not mention seizure of any document. Moreover the materials of record do not prima facie constitute the elements of the offences alleged as aforesaid.
24. In view of the above discussions, the proceeding being Dankuni Police Station Case No. 102 of 2009 dated 22.09.2009 under Sections 469/471/419/205/120B/500/506 /504 of the Indian Penal Code read with Sections 142/143 of the Railways Act, 1989 (G.R. No. 926 of 2009) and the Charge-Sheet No. 170 of 2010 dated 09.12.2010 under Sections 469/471/419/195/205/120B/ 506/504 of the Indian Penal Code read with Sections 142/143 of the Railways Act, 1989 are quashed.
25. Accordingly, the instant criminal revisional application being no. CRR 3888 of 2011 is allowed.
26. Accordingly, CRR 3888 of 2011 stands disposed of.
27. There is no order as to cost.
28. Let the copy of this judgment be sent down to the Learned Trial Court and the concerned police station as well for necessary action.
29. 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.)