

28.02.2025
Item No.33
ssd

CRR/1762/2011
PURNENDU ROY & ANR.
VS
STATE OF WEST BENGAL & ANR.

Mr. Sunil Kr. Singhanian,
Mr. Avinash Kankani
..for the Petitioner.

Mr. Krishnendu Bhattacharya, Id. Sr. Counsel,
Ms. Ranjana Chatterjee
..for the Opposite Party no.2.

This petitioner has approached this court under section 482 Cr. P.C. read with section 379 of the code of criminal procedure, 1973 for quashing the proceeding pending before the Ld court of ACJM, Durgapur filed by the petitioner challenging the orders dated April 20, 2011 and May 23, 2011 passed by the learned court of ACJM Durgapur in C.R case no 319/2010.

The petitioners are enquiring into a complaint filed by one M/S Sumangal Ispat Pvt. Ltd. ,Durgapur against the op no 2 who was entrusted as an enquiry officer by the RPF Authority to conduct an enquiry under section 3(a) RP(UP) Act 1966.

It is the specific case of the petitioner that there is a vigilance angle laid down in para 206.1 (I) Indian Railway manual, 2006 where the CVC tenders advice to the disciplinary authority so that (DA) can apply his

mind independently to the facts of the case to ensure the disciplinary matters are dealt with properly to maintain integrity and probity of public servants .

Prayers were made by the OP no. 2 being the enquiry officer before the court of ACJM Durgapur with a prayer to restrain the vigilance organization of eastern railway not to proceed with the abovementioned complaint .

The ld court held that the vigilance commission cannot conduct parallel investigation related to seized properties and materials in the case till the completion of the previous case. The Ld court further observed that the OP no.2 is not bound to disclose the information relating to any materials in this case to vigilance commission till the completion of its investigation .

The Ld advocate appearing on behalf of the petitioner submits that there is no scope of leaking information outside during the course of investigation. It has immunity from the RTI Act under section 8(1) and there is no scope of information being ventilated to the outsiders as they are acting in their official capacity.

It is further contended that the Magistrate has wrongfully held that the petitioners are guilty of interrupting a public servant sitting in a judicial proceeding under section 228 of IPC. The Indian Railways vigilance manual enunciates that complaint

received for investigation through the CVC must be inspected on propriety and the investigation report must be sent to board within 3 months . The commission could invoke section 8 & 11 of the CVC Act and conduct enquiry of its own in case of undue delay of dealing with such complaints.

It is further submitted that that the petitioners are presently retired from service and it would cause immense hardship if directed to be present before the court below. Accordingly prays for quashing of the proceeding pending before the 1d court of ACJM, Durgapur in C.R case no 319/10 or to set aside the orders dated 20.4.11 or 23.5.11.

The 1d advocate appearing on behalf of the opposite party no.2 on the other hand submits that the original case filed against the said firm Sumangal Ispat which is registered as RPF POST ANDAL PROPER CASE NO. 10/2010 dated 4.6.2010 must be allowed to be proceeded with as there was a specific allegation of theft of Railway properties.

It is further contended that the op NO 2 is retired from the service and he was exonerated from the charges of corruption leveled against him in the departmental proceeding initiated against him. It is strenuously argued by the 1d advocate that the original complaint of illegal possession of railway properties are

still pending for adjudication and the revisional application is devoid of any merit .

Heard the submissions of both the learned Advocates.

The genesis of this case rests on a complaint registered by RPF Authority, Andal, District BIRBHUM against M/S Sumangal Ispat Pvt. Ltd., Durgapur under section 3(a) RP(UP) Act which is pending before the court of Ld ACJM ,Durgapur registered as RP f post, Andal (proper) Case no 10/2010 . The O.P. no. 2 herein was entrusted to enquire into that case by the RPF Authority but during pendency of the proceeding one complaint was received from Central Vigilance Commission through Railway Board (Ministry of Railways) against the opposite party no.2 on 19.11.2010 lodged by one Manoj Kumar on behalf of Sumangal Ispat with the allegation of demanding bribe of rs.10 lacs to bail out the firm from allegation of illegal possession of railway property with a threat of submitting adverse report against the firm in a case of nonfulfillment of such demand.

It is specifically assailed by the petitioner that they caused an enquiry on receiving such complaint but OP no.2 filed the petition before the ld court with a prayer to restrain the vigilance organization not to proceed with the complaint without taking leave of the

court and being the investigating officer he should not be forced to divulge out any information to any agency.

The petition filed by the Staff officer to CSC /RPF/ER & E.O of the case being the I.O of the case was considered by the ld court on 20.4.11 where the present petitioners raised objection. In course of hearing this was pointed out that that one Mr. Ashoke. Kumar Jana CVI of vigilance department Eastern Railway also made inspection in respect of the seized Railway materials and is conducting a parallel enquiry into the case without the leave of the court when section 8 of RP(UP) Act has specified RPF officer only to enquire of the case under section 3(a) of the said Act.

On careful perusal of the materials from the record it transpires that admittedly a complaint was there against the Sumangal Ispat for having illegal possession of Railway properties and on account of the subsequent complaint of demand of Rs 10 lacs against the enquiring officer the said investigation was never completed which is apparent in the order dated 20.4.2011. In view of the order of Ld ACJM restraining the petitioners from conducting the subsequent enquiry as parallel proceeding, has also stopped the further investigation into the matter when the op no 2 was called by the office on three occasions to appear before the vigilance /ER for recording his voice for the purpose of forensic test and he avoided to come to office on

different reasons. The two proceeding was initiated on two different complaint and the nature of allegations are also different . Section 8 of RP(UP) Act of 1966 deals with the manner of investigation by an officer of the Force. The entire matter is only at a premature stage and the investigation is still pending. The evidence is to be gathered after a thorough investigation and to be placed before the court on the basis of which alone the court can come to a conclusion one way or other about mala fides. The vigilance Department of Eastern Railway started vigilance investigation against the O.P. no. 2 and the vigilance officials comprising of one officer and two Inspectors heard the complainant's view and demanded evidence in support of the allegations and an audio CD was handed over which contained alleged conversation by OP no.2 the investigation officer of the said case of having illegal possession of Railway properties.

Section 3 (a) of the said Act deals with the period of punishment to be inflicted upon for the first offense of theft ,dishonest misappropriation or unlawful possession of Railway properties-.The scope of enquiry in connection with such Act cannot be equated with the complaint lodged against the enquiring officer /O.P. no. 2 alleging demand of bribe of Rs 10lacs to bail out the firm for the allegations of illegal possession of Railway properties. Whether the report as submitted by the

O.P. no. 2 against the Sumangal Ispat Pvt. Ltd. on account of nonpayment of such huge sum will be dealt with by the Ld court in course of the further proceeding on the basis of evidences to be adduced by the respective witnesses. Section 482 of the Cr.P.C. vests inherent powers in the high court to make orders necessary to prevent the abuse of the process of any court or to secure the ends of justice and the same would be sub served if the complaint is allowed to be investigated by the respective authorities within the scope and ambit of the legal framework. Another point raised by the petitioner that The OP no.2 did not raise objection at the time of inspection and the said inspection not conducted with the leave of the court but first time raised in the written objection before the Ld Magistrate and vide order dated 20.4.2011 allowed the application directing the Vigilance organization of the Eastern Railway Authority not to cause investigation. The I.O being OP no 2 herein filed the petition before the Ld court in the RPF case no 10of 2010 with a prayer not to proceed with the complaint filed by Sumangal Isapt without taking leave of the court. The Railway employee i.e present petitioner filed the petition before the court in case no 319/2010 with a prayer to permit the vigilance organization to continue the process of investigation against the present OP.no.2

to find out the truth behind the allegation of taking bribe.

It is quite unusual that despite having a specific complaint against the enquiring officer followed by initiation of investigation against him from vigilance organization the Railway Authority did not assign another officer to continue with such investigation against Sumangal Ispat. Surprisingly when the no 2 was directed to be present the vigilance officer on 22.3.2011 on the same day he gave vigilance officer a letter intimating his inability to appear on account of the ongoing enquiry in connection with theft of railway materials from Quarry siding, Jamshedpur.

The Ld court took up the application in case no 319/10 and considered that the matter is pending before the HON'BLE High Court so section 8(h) of RTI Act will be applicable if any information relating to the investigation is pass out to the vigilance organization.

After disposal of this proceeding there cannot be any question of passing of information on account of pendency of this proceeding and the investigation may be permitted to proceed further if at all possible after a period of 14 years.

It is pertinent to mention at this stage that the instant revisional application was filed long back in the year 2011 and was admitted on 15.6.2011 when an interim order of stay of C.R case no.319 of 2010 was

granted by the Hon'ble Court which was subsequently extended and was made absolute on 30.7.2012. The matter was pending for last 14 years and the parties have retired from their respective posts.

In the above facts and circumstances after weighing the materials on record and the submissions made on behalf of the parties this court is not inclined to allow the prayer to quash the proceeding of C.R Case no 319 of 2010 but is of the view that the orders dated 20.4.11 and 23.5.11 which are under challenge before this court calls for interference.

Accordingly this Revisional Application is allowed.

The orders passed by the Ld Court of ACJM, Durgapur in C.R case no 319 of 2010 dated 20.4.11 and 23.4.11 are hereby set aside. The Ld Court is also directed not to insist on personal appearance unless it is required. The parties are directed to appear before the Ld court as and when directed to do so.

Urgent certified copy of this order, if applies for, be given to the Ld. advocates for the parties on usual formalities.

(CHAITALI CHATTERJEE (DAS), J.)