

CRR 3143 of 2015

Prasenjit Bera
Vs.
Inspector-in-charge, Eastern Railway & Anr.

Ms. Jeenia Rudra ...for the Petitioner

Mr. Arun Kumar Maity (Mohanty)
Mr. Priyankar Ganguly
...for the O.P. no. 1

The petitioner herein before the Trial court prayed for discharge from the prosecution but the court below by the order impugned dated 16th June, 2015, was pleased to reject such prayer made by the petitioner.

It appears from the prosecution case that on 18th October, 2012, a complaint was lodged by the RPF, Inspector in connection with theft of railway materials, their concealment and subsequent attempts to dispose of the same.

During enquiry on 12.1.2013 acting secret source information a raid was conducted near Farrakka more and accused Jalal Sk. was arrested. In his confessional statement, Jalal Sk. admitted that he had adopted unlawful way of disposing the stolen materials in the market with the connivance of his brother Atikul Seikh and Kalam Seikh as well as contractor Prasenjit Bera, who is the petitioner herein.

The prosecution case is as per contractors-cum-petitioner's own admission the dismantling work was completed on 9.10.2010. However, despite the lapse of over 24 months from the declared completion date, the firm failed to deposit the entirety of

the extracted ferrous materials with the designated IOW store. This prolonged delay raises doubts regarding the contractor's intent and compliance with contractual obligations. During the course of enquiry, the petitioner, Prasenjit Bera, the proprietor of M/s. Oracle Communication has been found liable under the provisions of Section 4 of the RP(UP) Act for his role in the conspiracy and abatement of misappropriation of railway property.

Prosecution further case is that the evidence reveals that the petitioner through dishonest means and in collusion with his associates, failed to return or deposit the entire stock of extracted railway ferrous materials to the designated railway authority. After completion of investigation, the prosecution submits that from the facts and circumstances of the case, the mens rea of the petitioner has been established as the petitioner misappropriated a portion of the extracted railway materials and further abated in their unauthorised disposal to scrap dealers for personal gain and that the petitioner's conspiracy and abatement in the theft of dismantling the railway property is evident from his willful failure to deposit the extracted materials.

However, learned counsel for the petitioner denied the involvement of the present petitioner with the alleged offence and contradicted the prosecution case. Accordingly, he filed an application seeking discharge from the case before the court below on the ground that no case has been made out against him and that allegation against him does not constitute offence. However, the court below rejected the said application stating that cognizance has already been taken by the court based on

prosecution report and supportive documentary evidence. Accordingly, she submits that the order impugned is perverse and does not reflect the ground for rejection of such prayer. Accordingly, she prayed for setting aside the order impugned.

Though no enquiry is required at this stage to ascertain whether at the end of trial, the petitioner will be convicted or acquitted but at this stage, court below is required to satisfy himself that there exists prima facie case against accused persons which has been made out during investigation. Moreover, he further needs to satisfy that the materials placed before the court below, disclose grave suspicion against the accused and not suspicion and this should have also been reflected in the order impugned.

In the light of the basic considerations that is required to be satisfied at this stage, the relevant order may be judged which is quoted below:-

“23/16.6.15- two accd. are present by filing hazira. one accd. Is absent by petn. and prayed for time. Prayer for time is considered and allowed. Today is fixed for passing order regarding petition dt. 13.01.15 filed by the accused Prasenjit Bera praying for his discharge from this case.

Perused the petition and other materials on record.

In the petition the petitioner/accused has inter alia contended that in the written complaint there is no whisper against the petitioner, there is no ingredients of offence against the petitioner as alleged in the prosecution report and as such, instead of take cognizance against the petitioner he ought to have been discharged from this case etc. In this case the prosecution report has been submitted. The petitioner has raised his contention touching the subject matter of this case which are not to be adjudicated at this stage. Therefore considering all aspects, I am of the view that his prayer for discharge cannot be allowed. Accordingly, the petition dt. 13.01.15 filed by the accused Prasenjit Bera is hereby rejected on contest cognizance is taken.

To 16.2.16 for appearance and ER of W/A.”

Having considered the facts and circumstances of the case, it appears that the order impugned is a cryptic one and not

a speaking order. The said order does not suggest that while the court below rejected the aforesaid prayer made by the petitioner, he was satisfied about prima facie case against the petitioner and that there are sufficient grounds for proceeding against the present petitioner. Petitioner herein has raised certain issues touching the subject matter of the case, cannot be the criteria for overlooking his application.

In such view of the matter, the order impugned passed by the court below dated 16.6.2015 is hereby set aside.

CRR 3143 of 2015 is accordingly allowed.

The Trial court is directed to re-hear the petitioner's prayer for discharge after giving opportunity to both the parties to contest and thereafter, to pass a reasoned order preferably within a period of eight weeks from the date of communication of the order without being influenced by observation made herein.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Dr. Ajoy Kumar Mukherjee, J.)