

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

PRESENT:

THE HON'BLE DR. JUSTICE AJOY KUMAR MUKHERJEE

C.R.R. 4597 of 2022

**Udayan Majumder
Vs.
The State of West Bengal and Ors.**

For the Petitioner : Mr. Indranil Nandi
Mr. Sayak Konar

For the State : Mr. Madhusudan Sur, APP
Mr. Manoranjan Mahata

Heard on : 14.11.2024

Judgment on : 27.01.2025

Dr. Ajoy Kumar Mukherjee , J.:

1. The impugned criminal proceeding, in respect of which petitioner has sought for his discharge arises out of a complaint dated 26th May, 2014 made by the then secretary, department of agriculture, Government of West Bengal on the basis of a report dated 25.04.2014, filed by the Deputy Superintendent of Police CID, West Bengal. Petitioner submits that the fact leading to the instant criminal proceeding emanates from a recruitment

process initiated by the Director, Agriculture Department, on 12th October, 2007 for recruitment of 331 Lower Division Clerk in the regional offices of the said Directorate. Accordingly an examination was held on 9th December, 2007 as per schedule and the result of said examination in the form of merit list of candidates was also published in the official website of the government and also in the notice board of the District Agriculture office.

2. However, by a notification dated 18th January, 2008, the State Government cancelled the said examination on the ground that it was learnt that some candidates could not appear in the said examination for no fault of their own. It is further submitted on behalf of the petitioner that some of the successful candidates whose name appeared in the merit list of candidates, (apart from two candidates whose contention were that they could not appear in the said examination for non-receipt of the admit card), instituted application before the Administrative Tribunal.

3. The Tribunal by the judgment and order dated 22nd July, 2009 was pleased to set aside the order dated 18th January, 2008 passed by State Government in cancelling the said examination and thereby directed the government to give appointment of the candidates from the merit list following the relevant roster.

4. Three separate Writ Petitions were instituted by two candidates who contended that they could not appear in the said examination for not receiving the admit card and thereby assailed the judgment and order passed by the Tribunal. A Division Bench of this High Court by an order dated 18th September, 2012 was pleased to dismiss all the three Writ

Petitions and thereby affirmed the judgment and order dated 22.07.2009 passed by the Administrative Tribunal.

5. Being aggrieved by the said judgment and order dated 18th September, 2012 the State Government assailed the said judgment before the Supreme Court by filing a special leave petition, which stood dismissed by the Apex Court on 22nd February, 2013. Thereafter, the State Government instituted a review application before the Division Bench of this High Court, which also stood dismissed. The State Government instituted another Special Leave Petition before the Supreme Court challenging the judgment and order passed by the Division Bench of this court, in disposing the Review Application, which stood dismissed as withdrawn.

6. In the meantime the successful applicants initiated a contempt proceeding against the then secretary, Department of Agriculture before the Division Bench, where contempt rule was issued against the defacto complaint by the Division Bench. Meanwhile the accused no.1 retired from the government service on superannuation on 31st January, 2014. Subsequent to the retirement of the accused no.1, the instant FIR was filed.

7. Mr. Nandi learned Counsel appearing on behalf of the petitioner submits that the prosecution has founded their case on assumption that accused no.1/petitioner herein had acted as the Chief Controller/Controller of the said examination. It has been stated that the successor in office of the accused no.1 could not recall if he had received all the files/CDs etc. relating to the aforesaid recruitment from accused no.1.

Later on some of the files were seized but the major portion of the files are missing. In fact it was learnt by the IO (investigating officer) during investigation that Dr. Dhabaleswar Konar, Director of the Directorate of Agriculture had initiated the recruitment process and that he had given his authority to the accused no.1 to conduct the process of recruitment. There is not a single document disclosed by IO in the instant case wherefrom it will appear that Dr. Konar assigned the responsibility of conducting the process upon the accused no.1, nor there is anything to show that accused no.1/petitioner was ever appointed as controller of examination. On the contrary the letter bearing memo no. 4879 dated 31.10.2007 states that the District Magistrate would function as chief controller of the examination for the said examination and it is also finding of the IO that the money was allocated directly to the DM (District Magistrate) for disbursement to schools. Accordingly petitioner contended that the secretary, Department of Agriculture was at the helm of the entire recruitment process and the accused no.1 being one of the members of the recruitment cell has carried out his function and/or duty under direct supervision of the secretary. He further contended that the information supplied, discloses that the allegation of missing files and non-availability of information regarding the recruitment examination and its procedure falls flat in as much as the secretary himself in notesheet as on 14th January, 2008 stated that the department was ready with all information sought from the West Bengal Information Commission by the employees association.

8. It is further submitted that the allegation of mis appropriation as against the accused no.1/petitioner have been found to have not been established by the IO. It is the finding of the IO that the money with regard to the recruitment process was disbursed directly to the Director of Agriculture, District Magistrate and Managing Director, West Bengal State Seeds Corporation. No disbursement of money has been found to have made either directly or by any other means to the accused no.1 and therefore, there was no entrustment of money upon the accused no.1.

9. The alleged non delivery of admit card upon the examinee prior to the examination on 9th December, 2007 and the allegation that for non-receipt of the admit card they could not appear in the examination, does not find any leg to stand because the advertisement was published in the leading newspaper and it was clearly indicated therein that if any candidate does not receive the admit card, he can collect duplicate admit card from the office of the agriculture department. Infact the aforesaid advertisement was published to maintain the transparency. The question of alleged non receipt of the admit card by the intending examinees, apart from the allegation of corruption, nepotism and malpractice in the conduct of aforesaid examination was gone into by Division Bench of this court, who found that the said allegations falls flat and the same having been affirmed by the Apex Court, the same cannot be reopened by the prosecution in the present criminal case.

10. He further argued that on perusal of the statements recorded by the IO under section 161 Cr.P.C, it will appear that one Anirban Sarkar in his statement has stated that the whole show was managed by the accused

no.1, Kalyan Sur, Sudhangshu Ranjan Roy and many other under the direct supervision of the secretary. The said statement also recorded that according to the said witness whatever changes in the answer sheet were shown to him, has been done at the strong room of the district control room during the period of tabulation of data. The petitioner accused no.1 was never assigned to look after the recruitment process by Dr. Konar. He further contended that court can rely upon relevant impeachable documents even at the time of considering the present petition as to whether petitioner acted as controller of examination or not and in this context he relied upon judgment of Apex Court reported in (2008) 14 SCC 1 (Rukmini Narvekar Vs. Vijaya Satarvekar & others). In fact the case made out by the prosecution as against the accused no. 1/petitioner by implicating him as controller of the examination is concocted and preposterous, despite having a copy of letter that by memo no. 4879 dated 31.10.2007, the DM was appointed as controller of examination of the aforesaid examination and Sub Divisional officers were entrusted to act as controller of examination for the concerned Sub-Divisions.

11. He further argued that in the instant case, the prosecution has failed to show that there is entrustment of any property upon the accused no.1 or that he has by corrupt or illegal means obtained for himself or for any other person any valuable thing or pecuniary advantage to attract section 13 (1)(c), 13(1)(d) of the Prevention of Corruption Act 1988, since disbursement of money was never made to the accused no.1. Moreover, in order to implicate the petitioner under section 409 of the Code, the prosecution will have to show that the accused was in any manner entrusted with property

or with dominion over property in his capacity as a public servant, but since there is no entrustment of any property upon the accused no.1 in the form of money or otherwise, the charge as against the accused no.1 both under the Act of 1988 or under the IPC are not maintainable. Infact the accused no.1/ petitioner has been victimized

12. Learned Trial Judge by the impugned order has recorded that she could not find any document where the accused no.1 petitioner was designated as controller of examination but the Trial Judge came to a finding that there are prima facie material to frame charge against all the accused persons and by the impugned order Learned Trial Judge accordingly proceed to reject the application for discharge filed by the petitioner. The petitioner accordingly prayed for setting aside the order impugned.

13. Learned Counsel appearing on behalf of the State submits that the present petitioner preferred a Criminal Revisional Application before this court being CRR 2806 of 2019, challenging the present proceeding against him and the same was dismissed by this High Court vide order dated 8th March, 2022. Challenging the said order dated 8th March, 2022 petitioner preferred Special Leave to Appeal before the Supreme Court being SLP (Cri) No. 3198 of 2022, which was disposed of by an order dated 13.04.2022. Thereafter two other accused persons of this case namely Kalyan Kumar Sur, Srtahn Barman also filed a Criminal Revisional Application before this High Court being CRR 4129 of 2022 and by an order dated 05.12.2023, the said Revisional application has also been dismissed by this Court. Thereafter the petitioner who is the co-accused has filed this application

which is not sustainable in the eye of law and accordingly he prayed for dismissal of the present application.

14. I have considered submissions made by both the parties.

15. The Supreme Court in ***Union of India Vs Prafulla Kumar Sasmal***, reported in **(1979) 3 SCC 4** had the occasion to consider the Trial Judges power to pass order of discharge and the court held in paragraph 7 as follows:

“7. Section 227 of the Code runs thus:

“If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.”

The words “not sufficient ground for proceeding against the accused” clearly show that the Judge is not a mere post office to frame the charge at the behest of the prosecution, but has to exercise his judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. In assessing this fact, it is not necessary for the court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which is really his function after the trial starts. At the stage of Section 227, the Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. The sufficiency of ground would take within its fold the nature of the evidence recorded by the police or the documents produced before the court which ex facie disclose that there are suspicious circumstances against the accused so as to frame a charge against him.”

16. From the aforesaid observation it is clear that the trial court at the stage of framing of charge has the power to sift the evidence, though for a limited purpose and to find out whether prima facie case has been made out against the petitioner or not but at the same time charge would not be framed on a mere suspicion. The law on this point is clearly stated by the Apex court in ***Sajjan Kumar Vs. CBI*** reported in **(2010) 9 SCC 368** wherein after referring the case of ***Union of India Vs. Prafulla Kr. Sasmal*** reported in **(1979) 3 SCC 4** and ***Dilawar Balu Kurana Vs. State***

of Maharashtra reported in **(2002) 2 SCC 135** the court observed in paragraph 19, as follows:-

“19. It is clear that at the initial stage, if there is a strong suspicion which leads the court to think that there is ground for presuming that the accused has committed an offence, then it is not open to the court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is only for the purpose of deciding prima facie whether the court should proceed with the trial or not. If the evidence which the prosecution proposes to adduce proves the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial.”

17. The implication of the word *strong suspicion* was also discussed in the case of **State of Bihar Vs. Ramesh Singh** reported in **(1977) 4 SCC 39** where it was observed that strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the court to think that there is ground for presuming that the accused has committed an offence, then it is not open to the court to say that there is no sufficient ground for proceeding against the accused

18. Thus the Trial Court while framing charge is not to act as a mere post office but he has to come to a conclusion whether there is ground for presuming that the accused has committed an offence, because the basic purpose of incorporating section 227/239 in the statute is to see that the accused must not be compelled to undergo a façade trial, where there are no sufficient grounds for proceeding against him.

19. A three Judge’s Bench of the Apex Court in case of **Orissa Vs. Devendra Nath Padhi** reported in **(2005) 1 SCC 568** held that section 227 was incorporated in the code with a view to save the accused from

prolonged harassment, which is a necessary concomitant of a protracted criminal trial. It is calculated to eliminate harassment to accused person when the evidential materials gathered after investigation fall short of minimum legal requirements.

20. In the light of aforesaid well settled proposition of law, laid down in various judicial pronouncements, let me consider the prayer made by the petitioner in the present context. The order impugned discloses that after completion of internal enquiry, to find out the actual culprits, one enquiry has been conducted by the CID who submitted a report on 24th April, 2024 and thereafter the present complaint was lodged by the department concerned where the said report had been made part of the complaint. It further disclosed that said report made it clear that malpractice of serious nature were done with the indulgence of the officials of recruitment committee with the help and aid and assistance of staffs associated and in by making conspiracy amongst themselves, the selection was done to absorb about 34 candidates who are close relative of the officials and employees of agriculture department.

21. It further appears that the petitioner herein has agitated all the points mentioned herein before the Trial Court also, contending that the prosecution failed to bring any single document in support of their contention that the petitioner was the chief controller or controller of said examination or any order as to delegation of power to him for doing such act as has been presented by the investigating agency against him before the Court and even without getting any supportive evidence in that regard investigating officer impleaded the petitioner in this criminal proceeding,

merely on the basis of assumption and on the basis of version of some witnesses. It was also urged before trial court that the Memo no. 4879 dated 31.10.2007 clearly states that District Magistrates were allowed to function as chief controller of examination in the concerned districts and Sub-Divisional Officers as controller of examination for the concerned sub divisions. Same plea was also agitated before the trial court that the fund for recruitment process were allocated directly to the District Magistrate and it was also agitated that petitioner thereafter got transferred and one Ashwini Kumar Samanta took the charge of his post but he was discharged though in his tenure some documents relating to the recruitment process were traced out from Almirah, from the chamber of the directorate (Administration) and the petitioner who has already been transferred therefrom, has been implicated.

22. Learned trial court while passed the order impugned has dealt with all the above mentioned issues and came to his ultimate finding. Relevant portion of the impugned order may be reproduced below.

“One thing is admitted herein that in the year 2007 while the recruitment process was going on accused no. 1 was A.D.A. (Admin) , accused no.2 was the P.A. to D.A. and accused no.3 was A.D.A of North Bengal. All were the employees of Department of Agriculture, Govt. of West Bengal. The allegation of the prosecution is that relating to that recruitment process of 2007 there was malpractice in consequence of nepotism and also misappropriation of funds by the officers and staff involved. Some of the candidates were selected who were the close relative or kin of the present accused persons and of other staffs of their department. The prosecution labeled the said act as misconduct by a public servant. It is true that I do not find any document where accused no. 1 was designated as Controller of Chief Controller of the examination (as Ld. Counsel pointed out). So whether he has any prima facie case for which he should be taken into trial that I have to find out. I thoroughly peruse the Case Diary I and find some documents/ communications therein signed by this accused person no.1 directing the department and staffs stating the managerial action to conduct the said examination. I think those documents should not be ignored. In Governmental process, it is true that there is one Register, namely, Movement Register Containing the movement of the files from one table to another but where the document is not found, the independent communication can be taken into account as proof of action taken or done. So here the documents found from

the Case Diary seems to me not unimportant one and thus the status of the accused no.1 at that stage cannot be ignored. It can be considered as prima facie material to deny the prayer for discharge. In this case it is also submitted by ld. Counsel of accused no.1 that while the matter was agitated before Tribunal or before the Hon'ble High Court, Calcutta the then principal Secretary on oath stated that there was no anomaly or irregularity in appointment, so why this complaint was lodged that is the matter to be taken into account. It is also stated that as the Govt. lost in all stages so out of rage this complaint has been filed, though there was no base of this complaint. Regarding that issue I am to observe that the main issue involved in the case decided by the Ld. Tribunal was the rightness in cancelling the recruitment process by the Govt. or not and there as I find it was written that the said recruitment process was canceled on public interest as some candidates failed to appear in examination without their own fault. So, while LD. Tribunal decided the issue surely he would not travel any other issues not related therein. If the then principal Secretary filed any affidavit on false version it will be his responsibility, to be accountable for such act. This court is not here to see or decide the issue giving more reliance on his version, ignoring the materials detected on enquiry. So, I think at this stage at the time of disposal of the petitions involved herein I am not to see whether that version was true or not specially while the said issue had been disposed of long ago by our Appellate Authority. Here I find few answer script of some selected candidates (names are not mentioned herein for the purpose of confidentiality) I am very much surprised seeing that the aggregate numbers had been increased by overwriting and by marking wrong answer. I find that those candidates have been selected on the basis of mark or number given by overwriting and in excess by interpolation. It is transpired from the statements of the witnesses recorded under section 161Cr.P.C., the name of accused no.2, who enquired about the names of kin and relatives of other employees appeared in the examination and I can co relate therefrom that the names are similar to the candidates some whose answer scripts had been detected in course of investigation with interpolation and overwriting showing marks much more than he or she actually scored. It has also come out in investigation that the daughter of accused no.2 and son of accused no.3 also got the chance in that examination and they are still in service. So these facts surely if be squared up I can say prima facie I find the materials for which those two accused also must be taken into trial. Court cannot sit as a mere spectator even after observing such anomalies in the process of evaluation which the investigating officer would be able to trace out even after lapse of seven years (the time enough for destruction of evidence.)

23. It would not be out of context to mention that being aggrieved by the selfsame impugned order no.85 dated 16.09.2022 the other two co accused of this case namely Kalyan Kumar Sur and Sarthak Kumar Verma preferred Revisional Application before this Court being CRR 4129 of 2022 and this Court while disposing their Revisional Application was pleased to dismiss their prayer and the relevant portion of the order passed by a coordinate Bench of this Court may be reproduced below:-

“having regard to the background of the present case which involves that only the relations of the portfolio holders or employees of the department of agriculture succeeded in the examination and the materials collected by the

investigating agency in support of the case, I am of the view that no useful purpose would be served in the facts of the present case thereby asking the learned Special Court to rehear the application under section 239 of the Code of Criminal Procedure. More so because of the fact that sections 240 or 228 of the Code of Criminal Procedure for the purpose of progress in the case incorporates the phrase 'the judge is of opinion that there is ground for presuming that the accused has committed an offence.' "

24. In my considered view from the materials on record it cannot be concluded that rejection of discharge prayer in respect of present petitioner with the above-quoted observation by the Trial Judge is either bad in law or abuse of the process of law or without any material. On the contrary the materials on record discloses grave suspicion against the petitioner and therefore, the Trial Court was justified in rejecting the discharge prayer of the petitioner. In the aforesaid circumstances the High Court would not be justified in discharging the accused person invoking its jurisdiction under section 482 of the Code.

25. C.R.R 4597 of 2022 thus stands dismissed.

26. However, it must be recorded that this court has considered the matter only from the stand point whether the petitioner can be discharged or not and the observation made herein shall not be taken to have expressed any opinion on merit.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Dr. AJOY KUMAR MUKHERJEE, J.)