

Monoranjan Das Vs. the State

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Court : Kolkata

Decided On : May-13-1993

Reported in : (1994)1CALLT11(HC)

Judge : Arun Kumar Dutta, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 216, 313, 401 and 482; ;[Indian Penal Code \(IPC\), 1860](#) - Sections 34, 120B, 201, 302 and 306; ;Bengal Police Regulation, 1943 - Regulation 272

Appeal No. : Crl. Rev. No. 721 of 1988

Appellant : Monoranjan Das

Respondent : The State

Advocate for Pet/Ap. : A.K. Adhya, Adv.

Disposition : Application allowed

Judgement :

Arun Kumar Dutta, J.

1. By the instant revisional application under Section 401, read with Section 482 of the Code of Criminal Procedure (hereinafter shortened into Code), the petitioner has prayed the Court for quashing the impugned order dated 29.1.88 passed by

the learned Additional Sessions Judge, 2nd Court, Nadia, in Sessions Case No. 41(3) of 1985, being Sessions Trial No. II of January 1988, before him and for quashing the charge under Section 201, read with Section 120-B, I.P.C., and the relevant proceedings against him on the grounds set forth therein.

2. While attached to Mirabazar R.O.P. as Sub-Inspector of Police under Police Station Kaliganj, Nadia, the Petitioner had investigated Kaliganj P.S. U.D. Case No. II dated 4.4.84 on the basis of a complaint by one Hamizuddin Sk. on the death of one Nafisa Bibi, wife of Nakibuddin Sk. of Janakinagar. He (petitioner) had held Inquest on the said dead body, and suspecting it to be a case of death by poisoning he had sent the dead body of the said Nafisa Bibi to Saktinagar Hospital for post-mortem examination. He has also requested District Medical Officer (hereinafter shortened into D.M.O.) to preserve viscera. On 13.4.84, he had written to the D.M.O., Krishnagar, requesting him to send the viscera of the said U.D. Case for Chemical Examination for ascertaining the cause of death.

3. On 16.4.84 one Nader Ali Sk. had handed over a written complaint at Kaliganj Police Station whereup Kaliganj P.S. Case No. 7 dated 16.4.84 under Section 306, read with Section 120-B, I.P.C. was started. On the direction of the Officer-in-Charge of the said P.S., the petitioner had taken up investigation of the said case. In course of the investigation he had received post-mortem report, but neither the viscera, nor the chemical examination report was given to him by the Hospital Authority. The Hospital Authority did neither send any reply to his aforesaid letter dated 13.4.84. He was under a bona fide belief that the Hospital Authority had sent the viscera for Chemical Examination, and the Report of the Chemical Examiner would be sent to the Court in due course. After completion of investigation he had, accordingly, submitted charge-sheet against the four accused persons named therein under Section 306, read with Section 120-B of the I.P.C. The relevant case was eventually committed to the Sessions Court at Nadia, and the learned Trial Judge had framed charge under Section 306, read with Section 34, I.P.C, against the four accused persons mentioned in the charge-sheet. The prosecution had examined its witnesses during the trial, and the evidence was closed on 21.1.88. The case was fixed on 29.1.88 for examination of the accused persons under Section 313 of the Code. On that date, on prayer of the prosecution the learned

Trial Judge had amended the charge by altering the existing charge under Sections 306/34, I.P.C, by Sections 302/34, I.P.C. in terms of Section 216 of the Code by his relevant order No. 4 dated 29.1.88 for the reasons recorded therein. By his subsequent (later) order No. 5 of the same date (29.1.88), the learned Trial Judge had directed issue of summons upon the petitioner-Investigating Officer under Sections 201/120-B, I.P.C. under Section 319 of the Code for the reasons stated therein mainly on the ground that he had submitted charge-sheet under Sections 306/120-B of the I.P.C. against the accused persons in the relevant case without sending the viscera which were preserved in the Hospital and without obtaining any report from the Chemical Examiner, observing therein that 'it appears from the materials on record that deliberate action was taken to cause disappearance of evidence of a case punishable under Section 302, I.P.C.' out of a criminal conspiracy between him (I.O.) and the accused persons.

4. Being aggrieved by the order so passed by the learned Additional Sessions Judge concerned the petitioner has moved this Court in Revision for appropriate relief in terms thereof.

5. As already indicated above, the learned Trial Judge by his impugned order had directed issue of process against the petitioner herein under Sections 201/120-B, I.P.C, mainly on the ground that he had submitted charge-sheet in the relevant case against the four accused concerned under Sections 306/120-B, I.P.C, without sending the viscera of the victim, which had been preserved in the Hospital for chemical examination and without obtaining any report from the Chemical Examiner, suggesting 'deliberate action on his part to cause disappearance of evidence of a case punishable under Section 302, I.P.C, against the accused persons' concerned in criminal conspiracy with them. As regards submission of charge-sheet by the petitioner without obtaining Chemical Examiner's Report in the relevant case, he does not appear to have erred in doing so as he could do so in view of the clear instructions contained in Regulation 272 (b) of the Police Regulations, Bengal, 1943. As, instructed therein, charge-sheet should be submitted by thejcmickest means! to the Court Officer for submission to the Magistrate. When a prima facie case is made in a case in which articles have been sent for chemical analysis, the charge-sheet not be delayed till receipt of the

Chemical Examiner's Report. As regards the sending of viscera of the deceased preserved in the Hospital for chemical examination it is indeed not for the Investigating Officer to send the same for the aforesaid purpose. In terms of the instructions contained in the Police Regulations, Bengal, the packing and forwarding of all exhibits and articles for examination are to be carried out by the police officer/s except when the preservation of such articles has been done by a medical officer. When there has been a postmortem examination by a Civil Surgeon or any duly qualified medical officer, the viscera and other articles (if any), connected with the case and found on or with the body at the time of examination are to be packed, sealed and despatched by the medical officer concerned. Similarly, when stomach washings, vomited matter, stools, etc. are preserved by the medical officer, the same should be packed, sealed and despatched by him, if requested to do so by the Investigating Officer. If in any case the Civil Surgeon considers for special reason that any matter or portion of a subject examined by him should not be sent by special messenger, he shall apply to the Superintendent (vide P.R.B. in criminal investigation for Bengal by Sri Shyamal Kumar Sinha Roy, First Edition, at pages 65-66). It would further clearly appear from Modi's Text book of Medical Jurisprudence and Toxicology, 17th Edition, at page 478 that a medical officer who has no experience of chemical analysis should never undertake the analysis, nor should he ever make any guess from the nature of the stomach contents, etc., but after obtaining necessary orders from the District Magistrate, he should forward the viscera to the Chemical Examiner or State Forensic Science Laboratory for analysis. The Magistrate conducting the proceeding should furnish the Chemical Examiner with a copy of the medical officer's post-mortem report and with every fact and detail either from deponents or from the police investigation, which may indicate the direction in which analytical inquiry may yield a positive result. The Chemical Examiner or his assistant who receives the articles for analysis from medical officers should first verify the seal and compare the labels with the Invoice list of the materials sent, and then open the articles etc. According to Medico Legal Jurisprudence the medical officer conducting post-mortem examination is required to send the following for chemical examination :-

'(1) the stomach and its contents,

- (2) the contents of the intestines,
- (3) at least one kidney,
- (4) Liver-at least one pound,
- (5) Urine, if found in the bladder,
- (6) in cases of exhumed or decomposed bodies, hair, nails and a sample of bones,
- (7) a sample of preservative used during the transit of viscera, and
- (8) in cases of exhumed bodies a sample of the soil where the body was interred should also be sent for examination because a plea is sometimes taken, in case arsenic is detected, that it was present in the soil.'

6. In view of the discussions above, there could be no mistaking that it not for the Investigating Officer but for the Medical Officer concerned holding post-mortem examination to forward viscera etc. to the Chemical examiner or the State Forensic Science Laboratory for analysis. The petitioner-Investigating Officer in the relevant case appears to have requested the District Medical Officer, Krishnagar Sadar Hospital by his letter dated 13.6.88 for arranging to send the viscera of the relevant case for chemical examination for ascertaining the actual cause of death, which was stated to be pending for final opinion, as appearing from the Annexure 'A' to the instant revisional application, the most that he could do. He (ptr.) appears to have performed his part of the obligation in the matter, as he was required to do, but it was certainly not' for him to send the viscera of the deceased to the Chemical Examiner for the purpose of chemical examination. He cannot certainly be made liable for the failure of the Medical Officer concerned to do so.

7. In view of the discussions above, it was not proper for the learned Trial Judge to issue process against the petitioner herein under Sections 201/120-B, I.P.C., as he did by passing the impugned order, on the ground that he (petitioner) had submitted charge-sheet in the relevant case under Sections 306/120-B, I.P.C., against the accused persons concerned in the relevant case without sending

viscera which had been preserved in the Hospital or without obtaining any report from the Chemical Examiner holding that it was a deliberate action on the part of the petitioner 'to cause disappearance of evidence of a case punishable under Section 302, I.P.C.' in criminal conspiracy with the accused persons in the relevant case.

8. In the result, the instant revisional application succeeds. The impugned order No. 5 dated 29.1.88 passed by the learned Trial Judge in the relevant case as also the relevant proceedings against the petitioner herein for alleged offence punishable under Sections 201/120-B, I.P.C., for which summons had been issued against him under the aforesaid impugned order be accordingly here by quashed. The petitioner be discharged from his bail bond in the relevant case, if on bail.

9. Let the relevant case proceed against the other accused persons before the Trial Court without any further delay.

10. The interim stay granted by this Court by order dated 13.3.88 be vacated.

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