

Saibur Rahaman and anr. Vs. the State of West Bengal

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Court : Kolkata

Decided On : May-06-2004

Reported in : (2004)3CALLT484(HC),2006(2)CHN74

Judge : Pravendu Narayan Sinha, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 156(3), 401 and 482;
;[Indian Penal Code \(IPC\), 1860](#) - Sections 109, 406, 408, 409, 417, 418, 419 and 420

Appeal No. : C.R.R. No. 310 of 2004

Appellant : Saibur Rahaman and anr.

Respondent : The State of West Bengal

Advocate for Def. : S.S. Roy and ;A.J. Sengupta, Advs.

Advocate for Pet/Ap. : Ganesh Srivastava and ;Md. Yusuf Ali, Advs.

Judgement :

P.N. Sinha, J.

1. This revisional application has been preferred by the petitioners challenging the order No. 6 dated 26.08.03 passed by the learned Special Judge, Special Court, Berhampore in Special Court Case No. 1 of 2002 thereby framing charge against

the accused petitioners under sections 409/419/420 of the Indian Penal Code (hereinafter called the IPC).

2. Facts of the case, in short, is that one Joynuddin Sheikh as de facto complainant filed complaint in the Court of learned SDJM, Lalbagh praying for sending the petition of complaint to O.C., Bhagwangola P.S. for investigation under Section 156(3) of the Code of Criminal Procedure (hereinafter called the Code) alleging therein that complainant is the son of late Raisuddin, an employee of Eastern Railway, who died on 19.11.81. Accused No. 2 is the father of accused No. 1 and accused No. 2 was also an employee of Eastern Railway and the accused persons and the said late Raisuddin were resident of same village. Accused No. 2 fraudulently concealing death of Raisuddin managed his son accused No. 1 Saibur Rahman to join in the said post of P.W. 2 Bhagwangola, Eastern Railway in the name of Raisuddin and accused No. 1 cheated Central Government by aforesaid act and caused financial loss to the Central Government by drawing salary working in fake name. Upon receiving the complaint the police started Bhagwangola P.S. Case No. 55 dated 30.09.01 under sections 406/408/409/407/418/419 and 420 of IPC against the accused persons and submitted charge sheet on March 16, 2002. Thereafter, the learned Judge, special Court framed charge against the accused No. 1 Saibur Rahman, under sections 409/419/420 of IPC read with Section 109 of IPC.

3. Learned advocate for the accused petitioners contended that the learned Judge failed to apply his judicial mind and framed charge without perusing materials on record properly. The learned Judge did not consider that the accused petitioner No. 1 joined his duty on June 12, 1986 and the complaint was lodged after 14 years 10 months 8 days from the date of joining of accused petitioner No. 1 in service and after 19 years 5 months 1 day after the death of father of de facto complainant. The petition of complaint and the charge sheet do not constitute any offence under sections 409/419/420 of IPC. The accused No. 1 has his nickname Raisuddin and he has no connection with Raisuddin, father of de facto complainant. There cannot be any offence under Section 409 of IPC in the form of taking salary because by rendering his services a person earns his salary and, therefore, there cannot be any entrustment nor defalcation of public money in the

form of salary. He contended that statement of witnesses also did not make out any offence against the petitioners.

4. Learned advocate appearing for the State submits that the superior officers of the accused petitioners under whom the accused petitioners are working did not lodge any complaint. Materials so far collected do not make out prima facie case against the petitioners. Learned Judge perhaps did not go through the materials on record properly.

5. After considering the submissions of the learned advocates of the parties and going through the materials on record I find that during investigation the Investigating Officer (hereinafter called the I.O.) could not collect sufficient materials against the petitioners. Statement of all the witnesses reveal that Saibur Rahman, accused petitioner No. 1 is also known as Raisuddin and father of accused petitioner No. 1 is Mahafej alias Mafej alias Bhola. Therefore, the accused petitioner No. 1 Saibur Rahman alias Raisuddin cannot be late Raisuddin, father of de facto complainant Joynuddin Sheikh. All the statements of witnesses reveal that both the accused persons have discharged their duties in railway with sincerity and honesty and there is no allegation at all against them. The witnesses also indicated that some ill motive person has influenced the police to start case against them. From the charge sheet, I find that the I.O. mentioned therein that during investigation he could not collect any direct evidence against the petitioners. The I.O. asked the de facto complainant to produce papers, documents, evidence or eye witness to establish his complaint but the complainant failed to produce any valid document in support of his allegation lodged by him against the accused persons in the FIR. It is not clear to me how in spite of that the I.O. submitted charge-sheet. The findings of the I.O. at the conclusion of investigation reveals that he could not collect any evidence against the petitioners and the de facto complainant also could not produce any valid paper, document, evidence and eye witness before the I.O. to substantiate allegations made by him against the accused persons in the FIR. It establishes that there was no iota of materials against the accused persons to make out any prima facie case against the petitioners to submit charge-sheet. It is strange that instead of submitting final report in the form of discharge the I.O. submitted final report in the form of charge-

sheet.

6. It is well known that at the stage of consideration of charge the High Court should not weigh or discuss evidence like trial Court or appellate Court but, in the instant case the matter is completely different as statement of witnesses did not made out any case against the accused petitioners. Statement of witnesses recorded during investigation makes it clear that all the witnesses stated that Saibur Rahman alias Raisuddin is serving the Eastern Railway for the last 17/18 years and his father is also ex railway employee who has retired recently and both of them have served the railway with due diligence, integrity and sincerity. No question of deflection of public money in the form of salary arises, nor does any question of cheating railway authorities, nor question of cheating by personation arise. The petitioner No. 1 is serving the railway last 17/18 years and by rendering his service to railway he is earning salary. This salary cannot become entrusted by railway authorities to petitioner and consequently, there cannot be offence under Section 409 of IPC by receiving salary for the services rendered. There was no complaint from railway authorities or superior officers of petitioner No. 1 against him for cheating the railway or causing cheating by prosecution by entering into railway service in the name of Saibur Rahman alias Raisuddin. There is no material at all to show that he entered into service in place of late father of de facto complainant using name Raisuddin. Identity of name of Raisuddin in this matter cannot be construed that in place of late Raisuddin, the petitioner No. 1 joined service using same name so as to join in a post against dead person. The railways made no complaint that petitioner No. 1 by false prosecution joined service in the vacancy caused due to death of Raisuddin, father of de facto complainant.

7. In the instant case, it is clear that there was no iota of materials against the accused persons. Learned Judge failed to apply judicial mind and did not properly peruse the materials on record and erroneously framed charge against the accused persons. No sufficient case was made out against the accused persons in the instant case and there were no materials against the accused persons to frame charge under sections 409/419/420 of IPC against the accused No. 1 and accused No. 2. It would be an abuse of process of Court to continue the criminal proceeding further and it is a fit case where this Court invoking its inherent

jurisdiction under Section 482 of the Code would stop abuse of the process of the Court and to secure end of justice quash the criminal proceeding and set aside the charges. Accordingly, the impugned order dated 26.08.03 passed by the learned Special Court, Berhampore in Special Court Case No. 1 of 2002 framing charge against the accused persons under sections 409/419/420 and 109 of IPC are set aside and the criminal proceeding being Special Court Case No. 1 of 2002 arising out of Bhagwangola P.S. Case No. 55 dated 30.09.01 (C.R. No. 93/2001) is hereby quashed and the accused persons be discharged from their bail bonds.

Send a copy of this order to the learned Special Judge/Special Court, Murshidabad at Berhampore for information and necessary action.

Urgent xerox certified copy be given to the parties, if applied for, expeditiously.

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