In Re: Kollal Dasgupta

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Court : Kolkata

Decided On : Aug-11-2003

Reported in : 2004CriLJ3494

Judge : Pradip Kumar Biswas, J.

Acts : Code of Criminal Procedure (CrPC) , 1974 - Sections 190 and 482; ;Indian Penal Code (IPC), 1860 - Section 504

Appeal No. : C.R.R. No. 283 of 2003

Appellant : In Re: Kollal Dasgupta

Advocate for Def. : Sekhar Basu, ;Joymala Bagchi and ;A. Ghosh, Advs.

Advocate for Pet/Ap. : S.S. Haque, ;Om Prakash Dubey and ;Gautam Kr. Basu, Advs.;R.P. Bhattacharjee, Adv.

Disposition : Application dismissed

Judgement :
ORDER

Pradip Kumar Biswas, J.

1. Parties are present. Heard them.

2. This is an application under Section 401 read with Section 482 of the Code of Criminal Procedure filed at the instance of the petitioner, Paresh Chandra Roy, seeking to quash the proceeding being C-715 of 2002, now pending before the Sub Divisional Judicial Magistrate, Barrackpore under Sections 504/506/500 of the Indian Penal Code.

3. The short facts leading to the filing of this revisional application are as under :--

The present petitioner is a public servant at present discharging his duty as Officer-in-Charge of Titagarh Police Station. It has been stated by the petitioner that on 12-12-2002, one Anil Kanti Das of Kalia Niwas (South), near Shib Mandir, Post Office Nona Chandanpukur, Police Station Titagarh, District North 24 Parganas has lodged a First Information Report with the Titagarh Police Station alleging that on 11-10-2002 at about 10.30 a.m. a group of People of Kalia Niwas Puja Committee consisting of about 20 persons came to the residence of the de facto complainant, Anil Kanti Das, being intoxicated and forced the said complainant to pay a sum of Rs. 201/- towards Durga Puja donation organised by the said Kalia Niwas Puja Committee, in the name of the Kalia Niwas Sadharan Durgotsab at Kalia Niwas Shib Mandir and that since the said de facto complainant offered to pay only a sum of Rs. 131/- in lieu of Rs. 201/- towards donation for the said Durga Puja, the said Kalia Niwasi Puja Committee became very furious and started abusing the de facto complainant by using filthy languages and they also abused his wife, Smt. Shipra Das using vulgar and abusive languages and they also had broken the glass pane of the window and warned the de facto complainant and his wife by saying that not a single glass pane of the window of their house will remain intact and had further warned that they would drive them away from the locality and make them face a dire consequence if the de facto complainant and his wife failed to pay the sum of Rs. 1001/- within 12.00 noon of 12-10-2002.

4. Immediately after the incident, the said Anil Kanti Das made a phone call to the Titagarh Police Station for help and the Officer-in-Charge of Titagarh Police Station was kind enough to depute one officer for spot verification and accordingly the officer sent by the petitioner verified the incident and recorded the statements

of the de facto complainant and his wife.

5. On the basis of the preliminary inquiry at the locality, the opposite party No. 1 and his brother, one Hillol Dasgupta were arrested in spite of obstruction and scuffle made by the opposite party No. 1 and his younger brother, Hillol Dasgupta and on 13-10-2002 within 24 hours of their arrest, the opposite party No. 1 who was one of the accused persons of the aforesaid Titagarh Police Station case, was produced before the learned Sub Divisional Judicial Magistrate, Barrackpore by police escort party and at the Court premises, some Advocates tried to snatch both the accused persons and finding the situation to be difficult, the police escort party was compelled to hand cuff both the accused persons and ultimately, they were produced before the Court.

6. It has further been alleged that on 2-11-2002, i.e. almost beyond 21 days of the alleged incident, the accused of the Titagarh Police Station case, i.e. the opposite party No. 1, Kallol Dasgupta, filed complaint before the learned Sub Divisional Judicial Magistrate, Barrackpore against the present petitioner and had prayed for issuance of process against the petitioner for the offence punishable under Sections 504/506(ii)/500 of the Indian Penal Code so as to make the petitioner the accused person of the said case and to face trial before the said Court upon the impugned complaint.

7. In the aforesaid case, the learned Court below examined the complainant as P.W. 1 and thereafter examined the witnesses under Section 200 of the Code of Criminal Procedure and ultimately, issued process against the accused petitioner, Paresh Chandra Roy under Sections 504/506/500, I.P.C.

8. Being aggrieved by and dissatisfied with the impugned proceeding including the filing of complaint and the impugned orders dated 2-11-2002, 7-11-2002 and 18-12-2002 passed by the learned Sub-Divisional Judicial Magistrate, Barrackpore, the petitioner has come up before this forum praying for quashing of the aforesaid proceeding and the impugned order alleging mainly that the cognizance taken in connection with this case was bad in law inasmuch as there has been absolute non application of mind by the Court itself which, therefore, vitiates the taking of cognizance and it has also been contended on behalf of the petitioner that the

instant complaint was filed with a mala fide intention only to harass and humiliate the petitioner and to wreak vengeance against him for the earlier administrative action taken by this petitioner against the present complainant and others. It has further been contended that on a plain reading of the complaint itself, it will appear that it does not disclose any offence against the present petitioner. Hence, this prayer for quashing.

9. This has been opposed by Mr. Bhattacharjee, learned counsel appearing for the State, alleging that looking into the impugned order of taking cognizance, it will be clear that there was no defect whatsoever in the order taking cognizance by the Court itself and it has been contended on behalf of the State that it is now quite settled position that the Court takes cognizance of the offence and not of the offenders as soon as the learned Magistrate applies his judicial mind to the offence stated in the complaint or in the police report etc., the cognizance is said to be taken. So, perusing the impugned order whereupon cognizance was taken by the Court, according to him, there was no illegality whatsoever. Mr. Bhattacharjee thus further contended that true it is that this Court possesses plenary power to quash the proceeding but that has to be exercised with utmost circumspection and such quashing should only be made in the rarest of rare cases but the present case in hand, according to him, is the case which cannot be termed to be the rarest of rare case so as to invoke the power of quashing of the present petition of complaint inasmuch as the same discloses cognizable offence against the present petitioner.

10. Accordingly, he prayed that since there is no merit in the submissions of the petitioner, the same should be rejected.

11. Mr. Basu, learned senior Advocate appearing on behalf of the opposite party No. 1 in opposing the contention of the petitioner has submitted before me that the endorsement of the learned Magistrate on the petition of complaint even if it is taken into consideration with reference to clauses (a) (b) and (c) of Section 190(1) of Criminal Procedure Code, it will certainly make the thing clear that there has, of course, been application of mind by the learned Magistrate itself in the matter of taking cognizance and he has further submitted that although there is no

explanation in the petition of complaint with regard to the delay but the delay, in the instant case was due to the closure of Court for long puja vacation. Mr. Basu has further submitted that the question of mala fide being a question of fact cannot be decided at this stage which is required to be decided on merit after recording of the evidence of and he has also submitted that the delay per se does not defeat the case itself at this stage because it is not the stage where the Court should ponder over the question of delay and this is a question which is required to be decided during trial after taking evidence .

12. So, according to Mr. Basu there is no merit whatsoever in the submissions made by the petitioner and as such quashing, as prayed for, should not be allowed in this case. I have heard the parties at length.

13. Mr. Haque in support of his contention has placed reliance on the decision reported in : 1976 CriLJ1533 in the case of Smt. Nagawwa v. Veeranna Shivalingappa Konjalgi and he has also placed on the decision reported in : 1978 CriLJ8 in the case of Tularam v. Kishore Singh, 1990 C Cr LR (Cal) 1, in the case of J. Th. Zwart v. Indrani Mukherjee and reported in : 1992 CriLJ527 in the case of State of Haryana v. Bhajanlal.

14. By referring to the first two decisions, it has been contended on behalf of the petitioner that the impugned order of taking cognizance by the Magistrate if examined or scrutinised in the context of the ratio decided by the Apex Court in the aforesaid two decisions it would make it quite clear that there is absolute non application of mind and as such taking of cognizance by the Court and the subsequent proceeding and the orders passed therein are all without jurisdiction and those should be set aside.

15. The said contention has been seriously disputed by the opposite party including the State of West Bengal alleging that the expression 'taking of cognizance of an offence' has not been defined in the Code itself, but from the scheme of the Code and upon plain reading of Section 190 of Cr.P.C. and the caption of Chapter XIV under which Section 190-199 occur, it will be clear that a case said to be instituted in a Court only when the Court takes cognizance of an offence alleged therein and when on receiving complaint the Magistrate applied

his mind for the purpose of proceeding under Section 200 and the succeeding Sections in Chapter XV of the Code of 1973, he is said to have taken cognizance of the offence within the meaning of Section 190(1)(a) of the Code of Criminal Procedure. It has further been submitted by them that going through the impugned order recorded in the petition of complaint, it became absolutely clear that the Magistrate after receiving complaint in the instant case had applied his mind and thereafter proceeded to examine the witness under Section 200 of the Code of Criminal Procedure and that being the position even by any stretch of imagination, it cannot be said that in the instant case, there has been non application of mind by the Learned Magistrate in the matter of taking cognizance.

16. Mr. Bhattacharjee, learned advocate appearing for the State drawing my attention to the decision reported in 1995 (3) Crimes 740 : (1996 Cri LJ 408), in the case of Anil Saran v. State of Bihar has submitted before me that it is now quite settled position of law that the Court takes cognizance of the offence and not the offender and as soon as the Magistrate applied his judicial mind to the offence stated in the complaint or the police report etc., the cognizance is said to be taken.

17. It has further been contended by Sri Bhattacharjee that here, examining the impugned order of taking cognizance passed by the learned Magistrate with reference to the ratio of the aforesaid decision, it will be absolutely clear that the learned Magistrate has applied his judicial mind and thereafter proceeded to examine the complainant and his witnesses under Section 200 of Cr.P.C. So, no exception could be taken against the matter of taking cognizance and the procedure adopted by the learned Court in dealing with the petition of complaint.

18. Accordingly, it has been contended by Mr. Bhattacharjee that there is no merit in the submission of the petitioner that the learned Magistrate has not applied his judicial mind of taking cognizance in this case.

19. Now, examining the rival contention of the parties in this regard and looking into the aforesaid decisions cited at the bar and perusing the impugned order in the light of the above decisions, I am rather inclined to hold that it is patently clear from the materials on record that in the instant matter of taking cognizance, the concerned Magistrate after receiving the petition of complaint has applied his

judicial mind and had taken cognizance and thereafter proceeded to examine the witnesses under Section 200 of Cr.P.C. and as such I find no defect in the aforesaid order and consequently, I also find no force in the submission with regard to the first contention of the petitioner.

20. Now, coming to the second contention of the petitioner with regard to the fact that the instant petition of complaint was filed with a mala fide Intention and has maliciously instituted with an ulterior motive for wrecking vengeance on the accused and with a view to spite him due to private and personal grudge as this petitioner being Officer in Charge of Titagarh P.S. had taken action earlier against the de facto complainant of this case and the de facto complainant with a view to harass and humiliate the present petitioner has come up before this Court with false and frivolous allegation and as such the instant complaint should be quashed on the basis of the ratio of the decision of the Apex Court in the case of Haryana v. Bhajanlal reported in : 1992 CriLJ527 (supra).

21. Disputing the aforesaid contention of the petitioner, it has been submitted on behalf of the opposite party No. 1 that on simple perusal of the complaint itself, it cannot be ascertained plainly whether the same is attended with mala fide and/or the same was maliciously instituted with an ulterior motive for wrecking vengeance on the accused and with a view to spite him due to private and personal grudge.

22. Rather reading the complaint petition as a whole, it will be clear that the allegations contained therein have made out a prima facie case against the present petitioner and as such as per the settled parameters laid down by the Apex Court as also by this Court, it is clear when the allegations levelled in the complaint make out an offence alleged, then no quashing is permissible.

23. It has further been contended on behalf of the opposite party No. 1 that here the claim of mala fide intention as has been alleged by the petitioner not being available on the face of the complaint or from allied materials, this cannot be decided at this stage and decision in this regard, if there be any, is required to be made on its merit in course of trial. So, at the present moment, there is no patent material to hold that the instant petition was submitted by the de facto complainant with a mala fide intention and/or with a view to spite him due to private and

personal grudge as this petitioner being the Officer in Charge of Titagarh P.S. had taken action against de facto complainant earlier.

24. Mr. Bhattacharjee, learned advocate appearing for the State drawing my attention to a decision reported in 1996 (1) Crimes 80 : (1996 Cri LJ 1877) (SC) in the case of Mushtaq Ahmad Habibur Rahman Faizi, has submitted that in the aforesaid decision, it has been held by the Apex Court that it is rather unfortunate that though the High Court referred to the decision in the State of Haryana v. Bhajanlal (supra) wherein this Court has enumerated by way of illustration of the categories of cases in which power to quash the complaint or F.I.R. can be exercised, but it did not keep in mind much less adhered to the following note of caution given therein.'

'We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases that the Court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extra ordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprice.'

25. Thereafter, the Apex Court set aside the impugned order of the High Court and directed the learned Magistrate to proceed with the complaint in accordance with law.

26. With reference to the aforesaid decision, it has further been contended on their behalf that the case in hand before this Court also does not come within the purview of rarest of rare cases and as such looking into the allegations of the complaint which certainly has made out a case, as alleged no quashing is permissible.

27. Now, giving my anxious consideration with regard to the aforesaid submissions made by the parties and examining the petition of complaint in the light of the decisions cited above, I am rather constrained to hold that his is not a fit case for quashing as prayed for, since in the petition of complainant specific allegation has been made Out against the present petitioner. So, quashing as prayed for by the

petitioner is not permissible.

28. That being the position and upon sifting the materials available and examining those on the parameters laid down by the Apex Court in this regard, I find no merit in the prayer of the petitioner regarding quashing of the petition of complaint and accordingly, the revisional application having no merit at all is being dismissed. The revisional is, thus disposed of accordingly.

29. Liberty is, however, given to the petitioner to raise the question of mala fide and other allied pleas before the trial Court at its appropriate stage and if such pleas are taken by the petitioner that should be disposed of by the Court below in accordance with law after hearing the parties before him.

30. Urgent Xerox certified copy of this order, if applied for, be given to the parties with utmost expedition.