Bimal Kumar Mondal Vs. State

Bimal Kumar Mondal Vs. State

SooperKanoon Citation : sooperkanoon.com/886138

Court : Kolkata

Decided On : Sep-28-2004

Reported in : (2005)1CALLT416(HC),2006(1)CHN216

Judge : Asit Kumar Bisi, J.

Acts : Code of Criminal Procedure (CrPC) , 1973 - Sections 154 and 482; ;Indian Penal Code (IPC), 1860 - Sections 120B, 420, 467, 468 and 471; ;Evidence Act, 1872 - Section 3

Appeal No. : C.R.R. No. 2432 of 2003

Appellant : Bimal Kumar Mondal

Respondent : State

Advocate for Def. : Asim Kumar Roy and ;Rupa Bandyopadhyay, Advs.

Advocate for Pet/Ap. : Tapas Kumar Ghosh, Adv.

Disposition : Revision dismissed

Judgement :

Asit Kumar Bisi, J.

1. By the application under Section 482 of the Code of Criminal Procedure the petitioner Bimal Kumar Mondal has sought quashing of proceeding of GR Case

No. 60 of 2003, arising out of Suri Police Station Case No. 24 of 2003 dated 4.2.2003 under Sections 467/468/471/420/120B of the Indian Penal Code pending before the Court of the learned Sub-Divisional Judicial Magistrate, Suri, Birbhum.

2. The facts anterior to filing of the instant application may briefly be narrated thus :-

Suri Police Station Case No. 24 of 2003 dated 4.2.2003 under Sections 467/468/471/420/120B of the Indian Penal Code was initiated on the basis of the FIR lodged by Debasish Som, Assistant Superintendent of Post Offices, Birbhum Division, Suri, Birbhum with the Officer-in-Charge, Suri Police Station on 4.2.2003.

3. It has been alleged inter alia by the de facto complainant in the FIR that 62 KVPs bearing No. 5 KVP 35BB 949007 to 949068 of denomination of Rs. 5,000/- each, having the total face value of Rs. 3,10,000/-, had been encashed fraudulently from Suri Head Post Office on 31.1.2003 on payment of Rs. 6,20,000/- which was the total value on maturity and the said amount of Rs. 6,20,000/- was shown to have been paid to one Bhola Nath Dutta of village Islampur-Dubrajpur, Birbhum. The departmental enquiry was conducted and it was revealed that the said certificates were purported to have been issued from Kalipahari Sub-Post Office under Asansol Head Post Office, District Burdwan in the name of B.N. Dutta, Asansol on 15.7.97 and the date of maturity of those certificates was 15.1.2003. As unfolded in the FIR, to take payment on expiry of 5 years one Sri B.N. Dutta (Bhola Nath Dutta) presented the fake certificates at Suri Head Post Office on 13.1.2003 along with the written application desiring to encash those certificates from Suri Head Post Office. From the endorsement made by Sri Ashok Mukherjee, the then Assistant Post Master, Suri Head Post Office in the said application it appears that the said application was sent to the Sub-Post Master, Kalipahari Sub-post Office under registered post on 13.1.2003. From further endorsement appearing in the said application it appears that the Sub-Post Master, Kalipahari Post Office verified the authenticity of those certificates under his signature, date and stamp which had been received by Suri Head Post Office through registered letter No. 5249 dated 21.1.2003. The value of those certificates payable on maturity had been paid to the said person named as

holder of those certificates by Sri Biswanath Saha, the counter Postal Assistant of Suri Head Post Office on 31.1.2003 under the pay order issued by Joynal Abedin, the then Assistant Post Master, Suri Head Post Office as per requisition of cash made by Sri Jagadish Patra who worked as the Assistant Post Master, Suri Head Post Office on 29.1.2003 without any local enquiry as to identification of the payee as per the rules of the department. The said payment was made in violation of the rules requiring such payment by cheque. The aforementioned payment was made on identification recorded by Sri Chittaranjan Mazumdar residing at near Police Line, Jatrik Club, Suri, Birbhum who was an authorised agent of Small Savings Scheme attached to Suri Post Office.

4. Further allegation is that the departmental enquiry revealed that those certificates were fake and not issued from Kalipahari Post Office and the endorsement of verification on the application in the name of Kalipahari Sub-Post Master is also a fake one and there was no such identical person residing at the address given in the application.

5. It is reasonably apprehended that some fake persons managed to obtain payment of Rs. 6,20,000/- in cash on false identification made by Sri Chittaranjan Mazumdar, an authorised agent of Small Savings scheme attached to Suri Head Post Office residing near Police Line, Jatrik Club, Suri, Birbhum and thereby cheated the Postal departmental of the Central Government.

6. As per the case of the petitioner at the time of the alleged occurrence he was employed as head treasurer of Suri Head Post Office and the duty of the head treasurer was to make arrangement for payment by cheuqe or cash as per requisition made by the Assistant Post Master concerned. In the instant case the requisition was sent to the petitioner for making arrangement of cash payment of Rs. 6,20,000/- by Sri Jagadish Patra, the Assistant Post Master (NSC), Suri Head Post Office on the written prayer made by one B.N. Dutta. Further case of the petitioner is that in the present case the requisition was sent by the said Jagadish Patra, the Assistant Post Master (NSC) who after proper verification and going through the necessary papers presented by the party concerned sent the same to the petitioner and when the petitioner arranged for payment of Rs. 7,46,000/-

including the amount of Rs. 6,20,000/- involved in the present case, the said payment was received by Sri Debotosh Mukherjee, Assistant Treasurer (I) and from him it was received by Sri Aloke Mitra, the Treasurer (II) and thereafter the amount was sent to NSC counter Postal Assistant Sri Biswanath Saha and at the every stage they put their respective signatures in the register when the amount was transmitted.

7. It has been alleged by the petitioner that he had nothing to do with the verification of the certificates or other papers produced by the party and in the present case on the reverse of each of the certificates payment order was made by the Assistant Post Master in Charge namely, Sri Joynal Abedin and there was no irregularity for which the petitioner can be responsible for making arrangement for payment as per the requisition made by the Assistant Post Master (NSC) on the alleged date. The grievance of the petitioner is that he is absolutely innocent and he is being harassed as an accused in connection with the instant case as the investigating authority made him an accused through the de facto complainant did not name the petitioner as an accused person in the FIR.

8. Mr. Tapas Kr. Ghosh, the learned advocate for the petitioner contended that the petitioner being the head treasurer, Suri Head Post Office had nothing to do with the alleged commission of the offence as stated in the FIR and no case was made out in the FIR against the present petitioner who was duty bound to obey the instruction of the superior officer namely, the Assistant Post Master concerned to make arrangement for payment as per requisition sent by the latter.

9. It was further urged by Mr. Ghosh that the learned Magistrate ought not to have issued warrant or arrest against the petitioner as per prayer made by Investigating Officer without going through the papers and the documents and since the petitioner was not at all involved in commission of the alleged offence, continuation of the proceeding against him would be sheer abuse of process of Court and the petitioner would be subjected to terrible humiliation if investigation is allowed to proceed against him.

10. It was pointed out by Mr. Ghose that though the petitioner was placed under suspension when the disciplinary proceeding was initiated against him, the said

order of suspension was subsequently revoked on 21.4.2003.

11. Mr. Asim. Kr. Roy, learned advocate appearing for the O.P./State contended, on the other hand, that the offence complained of was serious in nature inasmuch as, payment to the extent of Rs. 6,20,000/- was made on the basis of fake certificates and some employees of the Post Office concerned along with others committed criminal conspiracy and managed to obtain the payment of Rs. 6,20,000/- by encashing the forged Kishan Vikash Patras on false identification. Such payment, as argued by Mr. Roy, was made in violation of the order passed by D.G.(P). He produced the relevant copy of the order containing instruction to the effect that if discharge value of Kishan Vikash Patras was Rs. 20,000/- or more, the same must be paid by cheque only by the Post Office.

12. Mr. Roy further urged that the petitioner, Bimal Kumar Mondal was functioning as head treasurer of Suri Head Post Office at the relevant point of time and in spite of the said instruction of the postal authority he made arrangement for cash payment of Rs. 6,20,000/- on the basis of the Kishan Vikash Patras which were found to be fake on proper enquiry. He further contended that in such state of affairs investigation should be allowed to continue against the petitioner along with other accused persons to unearth the crime. He further pointed out that though the order of suspension of the petitioner was subsequently revoked, the disciplinary proceeding initiated against him has not been concluded. As submitted by Mr. Roy, although investigation commenced on the basis of the FIR lodged with the Officer-in-Charge. Suri Police Station, investigation could not progress because of the stay order passed by this Court and as such the stay order should immediately be vacated and the application filed by the petitioner should be dismissed so that the investigating authority can carry out investigation of the case which is of serious nature.

13. I have considered the rival contentions raised by Mr. Ghosh, learned advocate appearing for the petitioner and Mr. Roy, learned advocate appearing for the O.P./State.

14. As referred to hereinbefore, the FIR discloses a shocking incident of payment of Rs. 6,20,000/- by encashment of 62 fake KVPs on expiry of the alleged date of

maturity on false identification. The materials available on record indicate that the said certificates were purported to have been issued from Kalipahari Sub-Post Office in the name of one B.N. Dutta on 15.7.1997 and the date of maturity of those certificates was 15.1.2003. Those fake certificates along with a written application desiring to encash the same from Suri Head Post Office were alleged to have been presented by one B.N. Dutta to take payment and from the endorsement of the then Assistant Post Master, Suri Head Post Office in the said application it appears that the said application was sent to the Sub-Post Master, Kalipahari Sub-Post Office by registered post. It further appears from the endorsement appearing in the said application that the Sub-Post Master, Kalipahari Post Office verified the authenticity of those certificates under his signature, date and stamp and the same had been received by Suri Head Post Office. The value of those certificates payable on maturity had subsequently been paid by Sri Biswanath Saha, the counter Postal Assistant of Suri Head Post Office to the said person named as holder of those certificates under the pay order issued by the then Assistant Post Master, Suri Head Post Office and such payment was made on 30.1.2003. Instead of payment by cheque as per the rules the payment was made under requisition of cash made by Sri Jagadish Patra who worked as the Assistant Post Master, Suri Head Post Office on 29.1.2003 without any local enquiry as to identity of the payee as per the rule of the postal department and the payment was made on identification recorded by Sri Chittaranjan Mazumdar, who was an authorised agent of Small Savings Scheme attached to Suri Post Office. On departmental enquiry it was further revealed that those certificates were fake and not at all issued from Kalipahari Sub-Post Office and the endorsement of verification in the name of Sub-Post Master, Kalipahari Sub-Post Office in the same application was also a fake one and over and above there was no such person named as applicant in the address given in the application. The materials collected so far seem to have suggested a criminal conspiracy to commit the offences and some postal employees concerned along with others are involved in the alleged crime.

15. So to unravel the mystery in which the crime is shrouded effective investigation by the police authority is desideratum.

16. From the materials on record it emerges that the present petitioner, Bimal Kumar Mondal, was employed as head treasurer of Suri Head Post Office at the relevant point of time and made arrangement for payment of Rs. 6,20,000/- in cash as per the requisition sent by the Assistant Post Master (NSC), Suri Head Post Office to him. So it cannot be lost sight of the fact that the petitioner had a role to play in the matter of payment relating to those encashed fake KVPs. Whether or not the petitioner himself had mens rea and how far he was involved in the alleged criminal conspiracy to commit the crime are matters for the investigating agency to investigate. But the fact still remains at this stage that the petitioner as head treasurer made arrangement for payment of such huge amount of money in cash in utter violation of DG (P)'s instruction contained in DG Posts letter No. 5-20/UP-06/2000-INV dated 28/29.8.2001.

17. As already indicated, there is clear instruction that if discharge value of KVPs is Rs. 20,000/- or more it should be paid by cheque only by Post Offices. Clear violation of such instruction in the instant case is quite evident on the face of the record..

18. Mr. Ghose on behalf of the petitioner sought to argue that even if there was such violation of the instruction on the part of the petitioner, that was simply a fault or mistake on his part and nothing more than that and since the petitioner acted on instruction of his superior officer, he had no way out than' to make arrangement for payment as instructed by his superior officer. All those aspects of the matter are to be investigated by the investigating agency and unless the investigation has been allowed to continue and the investigating, agency arrives at a logical conclusion after investigation is concluded, it is hardly possible to decide anything on all these aspects of the matter.

19. It is settled law that the power of the police to investigate into a report which discloses the commission of a cognizable offence is unfettered and cannot be interfered with by this Court in exercise of its inherent power under Section 482 Cr.PC. It has been so held in a Full Bench decision of the Allahabad High Court in Ram Lal Yadav and Ors. v. State of U.P. and Ors. reported in 1989 Cr.LJ 1013 at page 1017 (para 7). In Ram Lal Yadav (supra) reliance has been placed on the

decision of the Supreme Court in the State of West Bengal v. Sampat Lal reported in : 1985 CriLJ516 : (1985) Cr. LJ 516 (para 21) wherein it was held:

'The next aspect to be considered is whether it is open to the Court to interfere with the investigation which is still proceeding. It has been conceded before us and rightly in our view, that investigation is a matter for the police under the scheme of the Code. Judicial opinion seems to be settled and we have several authorities of this Court where interference by the Court into police investigation has not been approved.'

20. The said observation of the Supreme Court has been quoted in Ram Lal Yadav (supra) at page 1017 in the last part of para 5.

21. In Jayant Vitamins Ltd. v. Chaitanyakumar and Anr. reported in (1992) 4 Supreme Court Cases at page 17 (para) the Supreme Court observed as follows :

'As repeatedly pointed out by various decisions of this Court that the investigation into an offence is a statutory function of the police and the superintendence thereof is vested in the State Government and the Court is not justified without any compelling and justifiable reason to interfere with the investigation.'

22. Applying the ratio of the abovenoted decisions to the instant case I am clearly of the view that there is no compelling or justifiable reason to interfere with the present investigation.

23. The application under Section 482 of the Code of Criminal Procedure filed by the petitioner for quashing of proceeding of GR Case No. 60 of 2003 arising out of Suri Police Station Case No. 24 of 2003 dated 4.2.2003 under Sections 467/468/471/420/120B of the Indian Penal Code against him is accordingly dismissed. Interim order of stay granted earlier stands vacated.

24. Let a copy of this order be sent to learned Sub-Divisional Judicial Magistrate, Suri, Birbhum forthwith for necessary action.

Urgent xerox certified copy of this order, if applied for, be given to the parties as expeditiously as possible.