

indrajit Mukherjee Vs. State

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Court : Kolkata

Decided On : Jun-16-2010

Judge : Ashim Kumar Roy, J.

Acts : Indian Penal Code (IPC) - Sections 34, 307, 323, 324, 341, 354 and 506

Appeal No. : C.R.R. No. 1199 of 2010

Appellant : indrajit Mukherjee

Respondent : State

Advocate for Def. : Krishna Ghosh, Adv.

Advocate for Pet/Ap. : Monoj Malhotra and; Santanu Kumar Mitra, Advs.

Disposition : Application allowed

Judgement :

Ashim Kumar Roy, J.

1. This criminal revision is directed against an order passed by the Learned Additional Chief Judicial Magistrate, Bidhannagar, North 24-Parganas in connection with G.R. Case No. 142 of 2009 arising out of Bidhan Nagar P.S. Case No. 18 of 2009 under Sections 341/323/324/307/506/34/354 of the Indian Penal Code, whereby the Learned Magistrate rejected the petitioner's prayer for grant of

no objection for Passport.

2. It appears that the present petitioner is an employee of a private company, viz. Cognizant. It further appears from the materials on record that after the petitioner successfully completed on boarding formalities he was asked by his employer to produce original documents relating to its educational qualification including his Passport etc. The petitioner not having Passport, while pursuing for the same found according to the statutory rules he was required to furnish along with his application for Passport, the details of criminal cases, if any, pending against him and if any such case is pending, then in that case to submit a no objection certificate to be issued by the concerned Court. Since the petitioner was arraigned an accused in connection with the aforesaid case, consequently he applied before the Learned Additional Chief Judicial Magistrate, Bidhannagar for issuance of no objection certificate, however the Learned Magistrate declined his prayer, hence this criminal revision.

3. Heard the learned advocates appearing on behalf of the parties. Perused the Case Diary and other materials on record.

4. It appears from the impugned order the Learned Magistrate refused to issue no objection on the sole ground that already charge has been framed and case is pending. In my opinion approach of the Learned Magistrate is wholly erroneous and not in accordance with law. The Learned Magistrate while considering the question of issuance of no objection in this regard he should not have moved so mechanically, and declined to issue no objection merely on the ground charge has been framed and a criminal case is pending. Mere pendency of a criminal case in my opinion by itself cannot be the ground for refusing to issue no objection by a Court. On the other hand, to reach a just to conclusion whether the no objection be issued or not the Court has to determine the issue from the angle of the nature of the offence, its gravity, the antecedent of the accused, his root in the society and the circumstance in which such offence has been committed. In the present case it appears from the evidentiary materials available from the Case Diary the alleged incident in which the petitioner has been arraigned as an accused along with the other members of his family is an incident which actually took place at the spar of

the moment. In fact two neighbouring families unfortunately got involved in some altercation with each other over the issue of parking of their respective cars. Even the female members of both the families including the petitioner got allegedly involved in such altercation and in course of such altercation the complainant was allegedly assaulted. It appears from the injury report, the injuries are minor in nature. There is nothing on record to indicate that the petitioner has a criminal antecedent. Thus, considering the gravity of the offence and other attending circumstances couple with the facts the Passport was necessary in connection with the employment of the petitioner which certainly relates to his livelihood, I am of the opinion the Learned Magistrate should not have rejected the petitioner's prayer for grant of no objection so as to enable him to apply for Passport. In my opinion, even if the Passport is issued to the petitioner that would not cause any hindrance to the just decision of the case or would likely to facilitate the petitioner to flee away from the course of justice or anybody would be prejudiced. Accordingly, the order impugned is set aside and the Learned Magistrate is directed to issue necessary no objection at once upon communication of this order.

However, I make it clear the Passport Authority must not be swayed by this order and shall consider question of issuance of the Passport to the petitioner in accordance with the provisions of the statutes. I also make it clear in the event the Passport is issued to the petitioner, then in such case, if the petitioner is required to leave the country during the pendency of the aforesaid criminal case, it will of course be necessary for him to obtain the prior permission from the Court below where the case against him is now pending for trial.

This application thus stands allowed.

Criminal section is directed to deliver urgent Photostat certified copy of this Judgement to the parties, if applied for, as early as possible.