

Bijan Naskar Vs. State

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Court : Kolkata

Decided On : Jun-22-2012

Judge : Dipak Saha Ray

Appeal No. : CRR. NO. 1824 OF 2011

Appellant : Bijan Naskar

Respondent : State

Judgement :

Dipak Saha Ray, J.

The present case arises out of an application under Section 401 of the Code of Criminal Procedure read with Section 482 and Section 483 of Code of Criminal Procedure 1973.

It is directed against the Order dated 17.3.2011 passed by the learned Chief Judicial Magistrate, Howrah, in Shibpur P.S. Case No. 262 of 2008 dated 19.7.2008 under Sections 420/406/403/506/34 of the Indian Penal Code corresponding to GR Case No. 1993 of 2008.

The relevant facts of the present case are, in a nutshell, as follows:

The present petitioner/defacto complainant lodged a written complaint with Shibpur P.S. alleging inter alia that the accused persons dishonestly

misappropriated the property of the petitioner/defacto complainant by committing criminal breach of trust and thereby cheated him. The said case was registered as Shibpur P.S. Case No. 262 of 2008 dated 19.7.2008. During investigation of the said case, the I.O. seized some of the gold ornaments as mentioned in the FIR under seizure list. Thereafter, as per the order of the court, the petitioner/defacto complainant furnished a bond of Rs. 4 lac for taking custody of the ornaments which were seized under the seizure list. Accordingly, the ornaments as mentioned in Sl. No. 4, 5 and 6 of the seizure list, were returned to the petitioner/defacto complainant. Subsequently, charge sheet was submitted on 30.6.2009 without making seizure of all the ornaments which were allegedly in the custody of the accused persons. After submission of such charge sheet, the petitioner/defacto complainant filed an application before the learned Chief Judicial Magistrate, Howrah for reinvestigation of the case. In response to the said application the learned Chief Judicial Magistrate fixed 17.3.2011 for hearing of the said application of the defacto complainant and the I.O. was directed to be present before the court on the said date of hearing. On 17.3.2011, the I.O. appeared before the court and informed that his predecessor in Office, did everything in respect of investigation of the case and accordingly, the learned Magistrate dropped the matter.

It is alleged that the said order dated 17.3.2011 passed by the learned Chief Judicial Magistrate, Howrah in Shibpur P.S. Case No. 262 of 2008 dated 19.7.2008, suffers from inherent impropriety and as such the present revisional application has been filed praying for setting aside of the same.

There is no controversy that the petitioner as defacto complainant initiated a case which was registered as Shibpur P.S. Case No. 262 of 2008. There does not appear to be any controversy that during investigation of the aforesaid case, some gold ornaments were seized under seizure list. There is also no dispute that the petitioner/defacto complainant as per the order of the court furnished a bond of Rs. 4 lac for taking custody of the seized articles. There is also no controversy that the petitioner filed an application alleging that before making seizure of all the gold ornaments, charge sheet was submitted and that all the seized articles were not returned to him and that on the basis of such allegation, the learned Chief Judicial

Magistrate fixed a date for hearing and asked the I.O. to be present before the court on the said date of hearing.

The controversy mainly relates to the question as to whether the clarification which was given by the I.O. in course of hearing on 17.3.2011 was sufficient for closing the enquiry in respect of the allegation regarding perfunctory investigation and non-seizure of all the articles mentioned in the FIR.

It has already been pointed out that in response to the application of the petitioner/defacto complainant for reinvestigation of the case, 17.3.2011 was fixed for hearing of the said application and I.O. was directed to be present before the court on the said date of hearing. Accordingly, on 17.3.2011, I.O. appeared and submitted that he was a mere transferee I.O. and everything in respect of investigation of the case, were done by the previous I.O. On the basis of such information, the learned Chief Judicial Magistrate, Howrah dropped the matter without making any endeavour to hear the I.O. who actually made everything in the matter of investigation of the case. No reason whatsoever has also been assigned by the learned Chief Judicial Magistrate as to why the matter was dropped. So, the grievances of the petitioner/defacto complainant that the said order dated 17.3.2011 has been passed without assigning any reason just cannot be brushed aside under the carpet. There is nothing on record to show as to what was the subjective satisfaction for the learned Chief Judicial Magistrate, Howrah so as to justify in passing the order to drop the matter without even rejecting the prayer of the defacto complainant.

Considering all such facts and circumstances, I am of the opinion that the said order suffers from inherent illegality and impropriety and thus, justifies interference by this court.

Accordingly, the instant revisional application succeeds.

CRR No. 1824 of 2011 be allowed and in the nature and background of the case without cost.

The impugned order dated 17.3.2011 passed by the learned Chief Judicial Magistrate, Howrah in Shibpur P.S. Case No. 262 of 2008 dated 19.7.2008 under Sections 420/406/403/506/34 of the Indian Penal Code corresponding to GR Case No. 1993 of 2008 is set aside.

Let a copy of this judgment be sent to the learned trial court for information and necessary action.

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