

(2023) 01 CAL CK 0004

In the Calcutta High Court

Case No : Criminal Revision No. 195 Of 2018, CRAN 1 Of 2021

Abdul Halim Sardar & Anr.

APPELLANT

Vs

State Of West Bengal & Anr.

RESPONDENT

Date of Decision : 02-01-2023

Acts Referred:

Constitution Of India, 1950 — Article 226
Indian Penal Code, 1860 — Section 120B, 381, 406, 409, 420
Code Of Criminal Procedure, 1973 — Section 397, 401, 482
Evidence Act, 1872 — Section 30

Citation : (2023) 01 CAL CK 0004

Hon'ble Judges : Subhendu Samanta, J

Bench : Single Bench

Advocate : Jayanta Narayan Chatterjee, Apalak Basu, Nazir Ahmed, S. Naskar, Jayashree Patra, Ritushree Benerjee, Dipanwita Das, Saswata Gopal Mukherjee, Arijit Ganguly, Manisha Sharma, Swapan Kumar Mallick, Priyanka Dutta, Sudeshna Das

Final Decision : Dismissed

Judgement

Subhendu Samanta, J

This is an application under Section 482 of read with 397/401 of the Code of Criminal Procedure for quashing a proceedings in connection with G.R. no.1267 of 2017 arising out of Domjur P.S. Case No.171 of 2017 dated 3.3.2017 under Section 420/406/381/409/120B of the Indian Penal Code pending before the Learned Chief Judicial Magistrate, Howrah(Sadar).

The brief fact of the case is that on the basis of a written complaint of one Rohit Chowdhury, Director of T.C. Motors Private Limited Domjur P.S. Case No.171 of 2017 was initiated against one Surajit Bej. The statement of the complaint in a nutshell, that Surajit Bej is one of the employees of the T.C. Motors Private Limited in the post of Insurance in-charge, he had fraudulently siphoned of a sum of Rs.25,00,000/- and mis-appropriated the said amount from the period of

March 2016 till the date of complaint. It was alleged in the complaint that Surajit Bej was entrusted by the company to collect premium amount from the customers for the company and deposit the same either to the Insurance Company or to the complainant company. He collected the premium amount from different customers and dishonestly mis-appropriated the funds for personal use without depositing it either to the Insurance Company or the complainant company.

During the course of investigation the accused Surajit Bej was arrested and during his police remand he made a confessional statement that he has committed the crime in conspiracy with the present petitioners nos.1 and 2. After conclusion of investigation the charge-sheet has been submitted against the Surajit Bej and the present petitioners showing the petitioners to be absconder.

It is the fact of the petitioners that the present petitioners were not at all involved in the alleged offence. Actually, the petitioners had informed the de facto complainant regarding mal-practice of Surajit Bej for which the de facto complainant has lodged the complaint. The principle accused Surajit Bej after having knowledge of such fact committed the false statement before the police alleging the present petitioners to be involved in the offence. Hence, the petitioners are before this Court for quashing the proceeding.

Learned advocate for the petitioners submitted before this Court that the police has submitted charge-sheet after conclusion of the investigation against the Surajit Bej and the present petitioners. The allegation of syphoning money by the present petitioners cannot be proved by the prosecution as the police has failed to collect any material regarding involvement of the present petitioners in the alleged offence. During the course of investigation police has conducted search and seizure but nothing has been seized from the possession of the present petitioners to substantiate the alleged offence against them.

He further pointed out that only on the basis of confessional statement made by the co-accused the present petitioners were charged. By virtue of order of Hon'ble Supreme Court in Suresh Budharmal Kalani Vs. State of Maharashtra reported in (1998)7SCC 337, framing of charge against accused persons only on the basis of confessional statement of co-accused is not proper.

Learned advocate appearing on behalf of the opposite party raised strong objection and submitted before this Court that the charge has been submitted against the present petitioners by showing the petitioners to be absconder. The warrant of arrest was issued against them. They did not appear before the police authority or before the trial court but prefer this instant revision to avoid the process of the Court. They adopted a mala fide practice by filing this instant quashing application, they try to avoid the direction of the learned Court below. He further argued that at this juncture sufficient materials are there in the Case Diary. The materials lying in the case diary shall be taken to be true at this juncture. This is not fit case to be quashed. He further argued that the High

Court should normally refrain from exercising the extraordinary jurisdiction under Section 482 of the Code of Criminal Procedure for quashing a proceeding at this stage. The prima facie case against the present petitioners has been sufficiently made out by filing charge-sheet against them. Holding mini trial of the High Court is not permissible before the trial at the Court of Magistrate. He further argued that no extraordinary facts and circumstances is raised by the petitioners in this case for their entertainment by this Court. He prayed for rejection of the instant revisional application. In support of his contention learned advocate for the opposite party has cited some order passed by this High Court in different proceeding. He also cited a decision of Hon'ble Supreme Court reported in (2022) 2 SCC(Cri) 787 to show the term of "abuse of process of Court" and its true meaning as defined under Section 482 of the Code of Criminal Procedure. He also cited a decision reported in (2009) 3 SCC(Cri) 996 regarding the duty of a Court at the time of framing of charge and prima facie probative value of materials submitted in the charge-sheet. On the same principle he also cited another decision reported in (2007) 2 SCC(Cri) 514.

Learned advocate for the petitioner also cited some decision to show the scope of High Court and its power to quash criminal proceeding in exercising its power under Article 226 and 227 or Section 482 of the Code of Criminal Procedure. He also cited a decision reported in (2016) 16 SCC 30 to show that there is no ban to exercise of inherent power of High Court to prevent the abuse of the process of the Court. In any other extraordinary situation which the High Court can think that its extraordinary inherent power may be unaffected.

Heard the learned advocates perused the judgment advanced by the learned advocates of either side.

Learned advocate on behalf of the State raised an objection and submitted before this Court that the investigation has already been concluded. There are sufficient materials to show that the present petitioners are very well involved in the alleged offence. He submitted that the petitioners may approach the learned Magistrate with a prayer for discharge but at this juncture the prayer for quash cannot be entertained. He submitted the case diary. Perused the case diary.

Let it be considered whether this High Court can exercise its inherent power to quash the proceeding against the present petitioners. On perusing the case diary, it appears that during the course of investigation police made search at the different places through nothing has been seized from the possession of the present petitioners. It further appears that the petitioners were not at all available during the entire course of investigation. So the charge sheet has been submitted citing the present petitioners to be absconded. On thorough reading of the case diary it appears that while the prime accused Surajit Bej was in police remand. He made a confessional statement that he transferred the amount to the petitioner. He also named two subordinate employees by the help of whom the said amount was transferred to the petitioners. The said two subordinate employees were not examined by the I.O. They also stated the name of the

petitioners. Considering the same, there are prima facie materials against the petitioners to submit charge sheet against them.

Let me consider the relevant law of confession of a co-accused.

Section 30 of the Evidence Act enumerated as follows:

"Section 30. Consideration of proved confession affecting person making it and others jointly under trial for same offence.--- When more persons than one are being tried jointly for the same offence, and a confession made by one such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession."

Thus, under Section 30 of the evidence Act 1872, a confession of an accused is relevant and admissible against a co-accused if both are jointly facing trial for the same offence. In this present case, petitioners and the accused Surajit Bej are facing the charge of the same case. So, the confessional statement made by the Surajit Bej has its value in the eye of law. The cited decision of Suresh Budharmal Kalani(supra) Hon'ble Supreme Court is of a view that where an accused has been discharged from the case and is not facing the trial with the co-accused; his confession cannot be used against other co-accused. So, this cited case is not at all applicable in the facts and circumstances of the case.

After considering the materials on record and after considering the case diary, it appears that there are sufficient materials for proceeding against the present petitioners. At this juncture, the criminal proceeding pending against the present petitioners is not at all improper or liable to be quashed.

I make it clear that the finding or observations made herein shall not considered to be sacrosanct or precedent in deciding the proceeding subsequently.

Thus, I find no merit to entertain the instant criminal revisional application and it is liable to be dismissed.

The criminal revisional application is dismissed.

All connected pending applications, if any, are consequently disposed of.

Any order of stay passed by this Court during the pendency of the instant criminal revision is hereby also vacated.

Urgent Photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.