

(2002) 03 CAL CK 0016
In the Calcutta High Court
Case No : C.R.R. No. 1646 of 2001

Aloke Kumar Mitra Mustafi and Another	APPELLANT
Vs	
The State of West Bengal and Another	RESPONDENT

Date of Decision : 06-03-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 205, 323, 482
Penal Code, 1860 (IPC) — Section 304A

Citation : (2002) 2 CALLT 444

Hon'ble Judges : Amit Talukdar, J

Bench : Single Bench

Advocate : Pradip Ghosh, Y. Dastoor and Sandipan Ganguly, for the Appellant; Sudipto Moitra, Abhra Mukherjee and Ranabir Roy Choudhury for Opposite party No. 2 and Alokanda Bose, for the Respondent

Final Decision : Dismissed

Judgement

A. Talukdar, J.—This is the tale told by the bereaved son of a deceased who while living had reached his geriatric age, on account of his ailment went to the doctor for treatment. His treatment resulted in his meeting his creator.

2. Anguish, shock, pain and sorrow suffered by the beloved of the deceased and after the tears dried in their arid cheeks prompted the bereaved son (the Opposite Party No. 2) who was not impleaded as a Party but, on account of the directions of the Court he was subsequently impleaded) to file a petition u/s 156(3) of the Code of Criminal Procedure (hereinafter referred to as "the said Code") before the learned Chief Judicial Magistrate, Alipore seeking directions upon Section-"U-1" Police Station to investigate into the allegations levelled in the petition by way of treating it as an FIR against one Dr. Sekhar Chakroborty who was approached for treatment of the deceased Late Hazarilal Agarwal for extraction of his teeth.

3. Pursuant thereof under the directions of the learned Chief Judicial Magistrate, Alipore Section "U-1" Police Station Case No. 360 dated 13.9.1999 u/s 304A of

the Indian Penal Code (for brevity, "the IPC") was registered for investigation.

4. Shri Sanjib Guha, Sub-Inspector of Police attached to Section "U-1" Police Station upon completion of Investigation submitted a Report in Final Form on 27.12.2000 against the said Sekhar Chakroborty; and Dr.. Alope Kumar Mitra Mustafi and Dr.. Subhasis Das who both acted as anesthetists of Dr.. Sekhar Chakroborty -- the present petitioners hereinbefore after showing them as absconding.

5. The learned Sub-Divisional Magistrate by his Order dated 27.12.2000 on the basis of the said Challan submitted against the accused persons took cognizance. Accused Dr.. Sekhar Chakroborty had surrendered on 20.9.99 and was enlarged on Bail; but since the present accused persons were absconding the learned Magistrate issued Warrant of Arrest against them and fixed date for supply of copy and execution return. Later on 29.12.2000 the absconding accused persons -- the petitioners hereinbefore surrendered and were enlarged on Bail upon their furnishing a bond of Rs. 1,000/- each with one surety of like amount and the learned Magistrate fixed 30.1.2001 for consideration of the prayer of personal exemption u/s 205 of the said Code. The copies were made available to all the accused on 18.5.2001 and on 01.6.2001 date was fixed for hearing the petition u/s 205 of the said Code. Ultimately on 04.7.2001 the learned Magistrate fixed 17.7.2001 for hearing the petition u/s 205 of the said Code and taking of plea at which stage the petitioners have moved this Court and obtained an Order of stay.

6. That is the entire profile of CGR Case No. 2900 of 1999.

7. The learned senior advocate appearing in support of the application for quashing has submitted that initially the petitioners herein were not in the array of accused in the petition filed u/s 156(3) of the said Code by the opposite party No. 2; but after the investigation their names cropped up and challan was submitted against them. He was extensively read out from the challan accompanying statements recorded by the Police during investigation and the averments in the petition which were treated as the FIR and has showed from the said documents that it was Dr. Sekhar Chakroborty who performed the surgical act and the petitioners merely acted as anesthetists and there was absolutely no material to connect the present petitioners with the offence for which they have been challenged as the ingredients of the offence complained of has not been properly made out.

8. He submitted further that the main centre of allegation does not converge against the petitioners hereinabove and it is apposite the proceedings should be quashed.

9. The learned advocate for the opposite party No. 2 opposed the submissions made on behalf of the petitioners and submitted that it is the cumulative effect of the ultimate act of all the petitioners hereinabove which has resulted in the untimely end of the father of the opposite party No. 2. He has objected to the reference made by the learned senior advocate for the petitioners to the

statements recorded at the stage of investigation and submitted that this Court cannot evaluate the same at this juncture. He further submitted that the offence is very serious and should be left for trial and no interference can be called for.

10. The learned advocate appearing for the State has adopted the submissions of the latter. She has handed over the Cases Diary also.

11. This Court is now entrusted with diagnosing the malady that haunts the petitioners and has persuaded them to beseech this Court to wriggle out from the situation faced by them in the post-challan stage of CGR Case No. 2900 of 1999 which is awaiting; taking of plea at which stage the accused persons have approached this Court to countenance the proceeding impugned.

12. The shadow Of death looms large on the spectre of the proceeding of a person whose taper was blown off prematurely by the wanton act of the accused -- one of whom Dr.. Sekhar Chakroborty had extracted 24 teeth of the helpness deceased and the present accused persons who acted as anesthetists in the said process.

13. This Court has carefully perused the entire Case Diary and the materials on record.

14. This Court has heard the elaborate submissions of the learned counsels appearing for the respective parties.

15. This Court pondered over the matter.

16. This Court has also independently considered as to whether the proceeding can be quashed in the light of the argument made on behalf of the accused.

17. This Court finds there is only one inescapable conclusion : the proceeding cannot be quashed for reasons more than one.

18. Not only there are sufficient materials collected during the investigation showing the culpability of the present accused persons but there are overwhelming materials showing the involvement of the present accused which are totally sufficient for their arraignment in the trial which has to reach its logical conclusion in accordance with law.

19. Also this Court finds from the Case Diary the report of the Professor and Head of the Upgraded Department of Forensic and State Medicine, Medical College and Hospital, Calcutta which clearly speaks of the guilt of the two accused persons in this application that while it was required for application of local anaesthesia the deceased was put under general anaesthesia. Dr.. Sekhar Chakroborty the co-accused who performed the extraction, the two other accused herein who administered general anaesthesia have in concert contributed to the death of the deceased. The statements recorded during the course of investigation clearly make out the offence against the present deceased persons along with the said Dr.. Sekhar Chakroborty. Their Involvement was very much clear and the argument of the learned senior advocate that the main

allegation was against Dr.. Sekhar Chakroborty cannot stand as it is found from the challan and its accompanying documents that the present two accused persons were equally guilty. The Investigating Officer after a very painstaking and meticulous investigation did an excellent job and submitted challan against Dr.. Sekhar Chakroborty the accused named in the FIR along with the two other accused who are the petitioners hereinabove u/s 304A of the IPC.

20. This Court is of the considered view that no cause for interference has been made out as there are sufficient materials as pointed out hereinbefore against these two accused, persons to stand the trial.

21. Just on the Dr.op of a hat the inherent powers of the High Court should not be used in the absence of any cogent or other overwhelming circumstances which I am sorry to say is painfully absent in the forecorners of the proceeding. A power u/s 482 of the said Code has to be exercised with utmost circumspection as has been held by the Supreme Court in *Dinesh Joshi v. State of Rqjasthan and Another*: 2002 SCC (Cri.) 24 :

"As lacunae are sometimes found in procedural law, the Section (read with Section 482) has been embodied to cover such lacunae wherefrom they are discovered. The use of extraordinary powers conferred upon the High Court under this section (read with Section 482) are however required to be reserved, as far as possible, for extraordinary cases."

22. In other words, although Section 482 of the said Code confers upon the High Courts" inherent powers to make the order as may be necessary to give effect to any order under the Code, or to prevent abuse of the process of any Court or otherwise to secure the end of justification; but in the present case can it be said that there is any abuse of the process of Court or the provisions of Section 482 of the said Code should be applied to secure the ends of the justice?

Perhaps not.

23. If not then the prayer of the petitioners for quashing the proceeding does not hold water and as it is by now very trite position of law and has been crystallised by innumerable decisions of the Supreme Court that only rarest of the rare cases the powers of quashing can be exercised. I am emboldened by the latest decision of the Supreme Court on this point reported in 2001 SCC (Cri.) 1361 : *S. M. Datta v. State of Rajasthan and Another* wherein Banerjee, J. speaking for the Division Bench held :

"Since the decision of the Privy Council in *Khwaja Nasir Ahmad (King Emperor v. Khawaja Nazir Ahmad)* and till this day there is existing one solitary principle that in normal circumstances, the law Courts would not thwart any investigation and criminal proceedings initiated must be allowed to have their own course under the Provisions of the Code."

24. This Court cannot be also oblivious of the latest decision of the Supreme Court in *State of Bihar and Another v. Md. Khalique and Another*: 2002 SCC

(Cri.) 228 wherein Their Lordships of the Hon"ble Supreme Court held:

"In Bhajan Led case this Court has also held that the power of quashing a criminal proceeding should be exercised sparingly and with circumspection and too in the rarest of the rare cases."

25. Similarly, in the case of Md. Salauddin v. Sujit Dutta and Another : 2001 C Cr. Lr (SC) 444 Their Lordships further held :

"It has been repeatedly held by this Court that the power of the Court u/s 482, Cr. PC should be exercised sparingly and only when the Court comes to the conclusion as otherwise it would be an abuse of the process of Court."

26. Can it be said that from a broad spectrum analysis even with a most charitable view that the proceeding is an abuse of the process of Court? Or, it is otherwise in the interest of Justice to q ash it.

27. On the contrary, this Court is of the view although the challan has been submitted against the accused persons for the offence punishable u/s 304A of the IPC but, however, the bloodcurdling narration of events and the act shows the offence of Section 304 Part-II of the IPC. In that event, the learned Magistrate would resort to the provisions of Section 323 of the said Code. In view of the discussions held hereinabove this Court finds that the line of argument adopted by the learned senior advocate for the petitioners is not persuasive enough to accede to the prayer for quashment; on the contrary, there is much substance in the submission of the learned advocate for the opposite party No. 2 that it is the cumulative act of the accused which has resulted in untimely end of the deceased.

28. The tale is now reaching its epilogue. But a feature which has bubbled up cannot make this Court to remain content by simply refusing to interfere with the prayer for quashing.

29. It appears that the two accused have prayed for personal exemption u/s 205 of the said Code which has been kept pending by the learned Magistrate for decision at the time of taking plea u/s 251 of the said Code. Since this is a case initiated on the basis of a Police Report and has ended in a Charge Sheet the question of granting personal exemption u/s 205 of the said Code does not arise simply because that clearly the language of Section 205(1) of the said Code shows :

"Whenever a Magistrate issues a summons, he may, if he sees reasons so to do, dispense with the personal attendance of the accused and permit him to appear by his pleader."

30. The provisions of Section 205 of the said Code are integral part of Chapter-XV of the said Code; although it is housed under Chapter-XVI of the said Code; but it necessarily relates to a proceeding instituted on the basis of a complaint and in the instant case the position was not applicable and that apart, summons

were not issued against the accused persons to appear before the learned Magistrate pursuant to submission of the Report in final form and the prayer for personal exemption is totally not maintainable and has to be discarded.

31. In view of the discussions held hereinbefore the Revisional Application, is dismissed having no merit and the learned Magistrate is directed to proceed with the trial most expeditiously and to conclude the same within a span of six months from the date of communication of this Order without fail. This time, limit would not be applicable if resort to Section 323 Cr. PC Is taken.

32. This Court feels that as the accused persons have stalled the proceeding on flimsy grounds and have contributed to the delay of the proceeding which was at a very crucial stage. This Court further finds that the accused persons have designed to protract the proceeding too. This Court is of the view that to discourage such prospective future speculative litigants from wasting the Court's time on flea bite reason the accused person should be saddled with some costs.

Accordingly, it is directed that each of the accused persons shall pay a cost of 200 gms. in favour of the opposite party No. 2 within a fortnight from today.

Let a copy of this Order be immediately sent down to the learned Magistrate and the Case Diary be returned to the learned State advocate upon proper receipt.