

(2023) 03 CAL CK 0068
In the Calcutta High Court
Case No : Criminal Revision No.597 Of 2019

Arindam Mukherjee

APPELLANT

Vs

Jagannath Das

RESPONDENT

Date of Decision : 20-03-2023

Acts Referred:

Constitution Of India, 1950 — Article 356(1)
Indian Penal Code, 1860 — Section 34, 120B, 323, 325, 354, 379, 506
Code Of Criminal Procedure, 1973 — Section 197, 200, 204
Evidence Act, 1872 — Section 65B

Citation : (2023) 03 CAL CK 0068

Hon'ble Judges : Shampa Dutt (Paul), J

Bench : Single Bench

Advocate : Rajdeep Majumder, Moyukh Mukherjee, Abhijit Singh, Radhika Agarwal, S. Ahmed, Danish Taslim, A.R. Bhattacharya, A. Singh, G. Pervin

Final Decision : Allowed

Judgement

Shampa Dutt (Paul), J

The present revision has been preferred praying for quashing of the proceedings pending in connection with Complaint Case No. C-668/2018 under Sections 323/325/379/354/506/120B/34 of the Indian Penal Code now pending before the Court of the Learned Additional Chief Judicial Magistrate, Basirhat, North 24 Parganas and all orders passed in connection therewith including order dated 08.02.2019 whereby the Learned Additional Chief Judicial Magistrate, Basirhat was pleased to issue warrant of arrest against the accused person, petitioner herein under Sections 323/325/379/354/506/120B/34 of the Indian Penal Code.

The petitioner's case is that the petitioner herein is a Block Development Officer (B.D.O.). The petitioner joined the West Bengal Civil Services in the year 1994 and was posted as a Revenue Officer in the Land and Land Reforms Department. Thereafter the petitioner was promoted as an Executive Officer in the 2015. The Petitioner has also been serving as the Block Development Officer (B.D.O.) of the

Hasnabad for last one and a half year.

The petitioner's further case is that Jagannath Das (herein after referred as the opposite party) filed a complaint case under Section 200 of the Code of Criminal Procedure, before the Additional Chief Judicial Magistrate, Basirhat and which was subsequently registered as Complaint Case No: C-668/2018 under Sections 323/325/379/354/506/120B/34 of the Indian Penal Code, 1860.

The allegations as leveled in the said complaint, inter alia, were to the effect that the opposite party is General Secretary of "Shramajivi Samannay" Committee, located at Taki, Basirhat, North 24 Parganas. That on 12.10.2018 on behalf of the committee an appointment was asked for from the Block Development Officer, (hereinafter referred as the B.D.O.) Hasnabad to consult regarding the submission of a mass deputation regarding a matter of public interest. Accordingly the B.D.O. decided the appointment to be on 01.11.2018 at 1 pm in the afternoon. On the said date the opposite party with four other representatives of the committee and around 500 people of which many women gathered in the office of the B.D.O. with some important documents. After reaching there the opposite party saw that there are many unknown people. The B.D.O. introduced them as representative of the Panchayat Samity. The unknown people asked the opposite party about his purpose of visit and knowing that the opposite party was there to submit a deputation they thwarted the way and abused them in filthy language. The B.D.O. informed that no deputation will be taken, and also rejected the idea of a meeting. When the opposite party protested to that, the unknown people present there along with the B.D.O. and the S.I Mrinal Pal threatened them with dire consequences and told them to leave. The opposite party and his people refused to do the same, to which, under the instruction of the B.D.O. they started assaulting the opposite party and others with fists and blows and also snatched away some important documents. Even more, under the instruction of the B.D.O., women from the group of the opposite party were molested and abused in filthy languages; they also tried to choke witness no. 5 (as mentioned in the complaint).

The opposite party informed about the incident in Hasnabad Police Station but no F.I.R was registered. Later the same information was forwarded to the Sub-Divisional Officer, Basirhat, Superintendent of Police. Basirhat, Superintendent of Police Basirhat and the District Magistrate, North 24 Parganas.

The Learned Additional Chief Judicial Magistrate, Basirhat took cognizance of the instant case on 26.11.2018. On 01.12.2018 the learned Additional Chief Judicial Magistrate, Basirhat was pleased to issue process against the petitioner herein and others under Section 204 of the Code of Criminal Procedure.

The petitioner could not appear before the Learned Additional Chief Judicial Magistrate, Basirhat on 08.02.2019 because he was called by the District Magistrate and District Election Officer of North 24 Parganas to attend an Election Training Programme meant for the officers of Block level scheduled on

08.02.2019 to 09.02.2019 from 9 a.m. The petitioner herein vide a letter bearing Memo No. 211/HBD dated 06.02.2019 informed the Office of the Learned Additional Chief Judicial Magistrate, Basirhat Court, North 24 Parganas, about the official engagement on 08.02.2019, the Letter was received and duly stamped by the office of the Ld. A.C.J.M. The Ld. A.C.J.M. in his order dated 08.02.2019 was inclined to hold that the petitioner herein had within his knowledge, the issuance and received Summons from the Ld. Court and as he failed to appear either in person or through Advocate as per law issued Warrant of Arrest against the present petitioner and fixed the next date on 25.02.2019.

The petitioner submits that petitioner is innocent and is in no way connection with any offence far less the offences alleged in the complaint filed by the opposite party.

The allegations in the complaint are vague as the allegations do not reflect any ingredient of the offences as alleged against the petitioner herein.

The instant proceeding as initiated against the present petitioner is absolutely baseless, frivolous and displays a clear misuse of the provisions of criminal law and fails to disclose any commission of offence by the petitioner.

Mr. Rajdeep Majumder, learned counsel for the petitioner has submitted that the petitioner is completely innocent and in no way connected with commission of any offence far less the offences alleged herein. The opposite party herein has initiated the instant proceedings which is palpably frivolous and was initiated only with a view to harass and intimidate the petitioner herein, which would be evident from the nature of allegations as ventilated through the petition of the said complaint case.

The Supreme Court in a catena of has specifically stated about the need of the certification in admissibility of evidence regarding electronic devices. According to the examination of witness namely Kamali Kandar Biswas on 01.12.2018 it has been clearly stated that a video recording of the alleged incident was shown and was also taken on record. The said video recording was taken or record without any certification as has already been specifically elucidated by the Hon'ble Apex Court time and again.

That it is of vital importance to mention that the instant proceedings was drawn against a Block Development Officer appointed by the hand of the Governor and the instant proceedings as alleged has been drawn when the petitioner was "acting or purporting to act in the discharge of his official duty", which goes to show that the taking of cognizance by the Learned A.C.J.M. is arbitrary in nature.

The impugned proceedings is vexatious and the same was instituted in order to malign the reputation of the petitioner.

Order dated 08.02.2019 issuing the warrant of arrest against the petitioner herein is arbitrary in nature and is liable to be quashed and set aside.

From a bare perusal of the impugned complaint, it is evident that no offence can be said to have been committed by the petitioner herein and therefore, the continuation of the impugned proceeding any further will be a clear abuse of the process of court.

The impugned proceeding is otherwise bad in law.

Mr. S. Ahmed, learned counsel for the opposite party has submitted that the proceedings in this case should be permitted to continue as only a trial will disclose the truth. Recorded video of the said incident was also considered by the Ld. Magistrate which substantiates the allegation made in the Complaint. Being Prime face satisfied the Ld. Magistrate had directed to issue process in terms of the 204 Cr.P.C. In fact the incident occurred in the office of Block Development Officer which was under CCTV Surveillance. Therefore, the application was made by the Complainant for production of the CCTV footage. In as much as the video footage produced by the complainant and the CCTV footage of the Said office could be the best evidence as held by the Hon'ble Supreme Court in *Tomaso Bruno and Another Vs State of Uttar Pradesh* reported in (2015) 7 SCC 178 (Paragraph 21, 26, 28 and 42).

It is further stated by the learned counsel for the opposite party that the complaint and other documents show that entire incident occurred at the dictate of the B.D.O. directing the Police and other unknown persons who were sitting at his office to assault and or molest and this is not the official duty of the B.D.O. No Complaint has made by the B.D.O. to the Police Station or anywhere else in regard to the said incident.

It is further stated that the petitioner did not press the ground that they have taken in their petition regarding sanction under Section 197 Cr.P.C. In any event the said ground cannot sustain in view of the Law of declared by the Hon'ble Supreme Court in *Surinderjit Singh Mand and another Vs State of Punjab* and another reported in (2016) 8 SCC 722 (paragraph 1, 2, 6, 13, 20, 23, 25).

The petitioner did not ever press the point of admissibility of electronic evidence in absence of Certificate. In any event the said, that ground of challenge also does not sustain since the law declared by the Hon'ble Supreme Court in *Shafhi Mohammad Vs State of Himachal Pradesh* reported in AIR 2018 SC 714 has already been overruled by Hon'ble Supreme Court in *Arjun Panditrao Khotkar Vs Kailash Kuanrao Gorantyal* reported in 2020 (7) SCC 1 (paragraph 40, 41, 73.2).

The Hon'ble Apex Court has clarified in para 73.2 of the said judgment that certificate under Section 65B Evidence Act, 1872 is unnecessary when the original video recording is produced before the Court by the owner of the electronic gadgets which includes mobile phone. In as much as in the present case the video footage of the incident recorded in the mobile phone was produced before the Learned Magistrate. The Ld. Magistrate had considered the video footage at the time of examining witnesses before being Prima facie satisfied in regard to the said complaint and/or before the issuance of summon.

None of the parameters for quashing of any criminal proceeding as laid down by the Hon'ble Supreme Court in State of Haryana Vs Bhajanlal (AIR 1992 SCC 604) Paragraph 102 is satisfied in the instant case. The opposite party has thus prayed for dismissal of the revision.

The petitioner has relied upon the following judgments:-

- (1) State of Haryana vs Bhajan Lal, AIR 1992 SC 604.
- (2) D.T. Virupakshappa vs C. Subash, 2015 (12) SCC 231.
- (3) Debasish Chakraborty vs State of West Bengal & Anr., 2017 SCC OnLine Cal 15477.
- (4) Matajog Dobey vs H.C. Bhari, (1955) 2 SCR 925 : AIR 1956 SC 44.
- (5) Krishnendu Narayan Chowdhury vs State of West Bengal, 2008 SCC OnLine Cal 62 : Cri LJ 2008 1691.
- (6) Shafhi Mohammad vs State of Himachal Pradesh, AIR 2018 SC 714.
- (7) Anvar P.V. vs P.K. Basheer and Ors., 2014(10) SCC 473.
- (8) Sanjaysinh Ramrao Chavan vs Dattatray Gulabrao Phalke and Ors., 2015(3) SCC 123.
- (9) Inder Mohan Goswami and Anr. Vs State of Uttaranchal and Ors., 2007(12) SCC 1.
- (10) Priyanka Srivastava and Anr. Vs State of Uttar Pradesh and Ors., (2015) 6 SCC 287.

The opposite party has relied upon the following judgments:-

- (1) Lalita Kumari vs. Government of Uttar Pradesh and Ors., (2014) 2 SCC 1.
- (2) Tomaso Bruno and Anr. Vs State of Uttar Pradesh, (2015) 7 SCC 178.
- (3) Surinderjit Singh Mand and Anr. Vs State of Punjab and Anr., (2016) 8 SCC 722.
- (4) Arjun Panditrao Khotkar vs Kailash Kushanrao Gorantyal and Ors., (2020) 7 SCC 1.
- (5) State of Haryana and Ors. vs Ch. Bhajan Lal and Ors., (1992) 3 SCR 735 (SC).

From the materials on record in this complaint case the following facts are before this court:-

- 1) The petitioner/BDO/Executive officer of the Panchayet Samiti/accused was on duty at the time of incident.
- 2) The alleged incident took place inside the BDO office, at his place of duty.

3) Some members of the Panchayat Office were allegedly present, the BDO being the executive officer of the Panchayat Samiti.

4) The opposite party admittedly was present with 500 members in his delegation to submit a deputation.

5) Taking a deputation of the public/political group is part of official duty of a BDO, connected to the work of the Panchayat Samiti, who is responsible for the development and welfare of a block.

The West Bengal Panchayat (Panchayat Samiti Administration) Rules, 2008, lays down:-

"84. Powers, functions and duties of the Executive Officer of Panchayat Samiti:-

(1) The Executive Officer of the Panchayat Samiti (hereinafter in this chapter referred to as the Executive Officer) shall be responsible for taking necessary action on the decisions arrived at in the meetings of the Panchayat Samiti and shall keep the Sabhapati posted with the progress of various development activities in the Panchayat Samiti as also with the problems and difficulties, if any, experienced in the functioning of the Panchayat Samiti from time to time.

(2) The Executive Officer shall submit a monthly statement of accounts to the Artha, Sanstha, Unnayan O Parikalpana Sthayee Samiti and such statement of accounts shall, after being examined by such Sthayee Samiti, be laid in the next meeting of the Panchayat Samiti for considering measures for speedy and proper utilisation of the available fund under different heads of account.

(3) Unless otherwise stipulated in the Act or the rules or orders made thereunder, correspondence of the Panchayat Samiti shall be carried on by the Executive Officer or, on his behalf, by the Joint Executive officer or any other Officer as may be authorised by him.

(4) The Executive Officer shall attend, as far as practicable, all meetings of the Panchayat Samiti, its Sthayee Samitis and Block Sansad and take part in the deliberations.

(5) The Executive Officer shall be responsible for implementation of all programmes and schemes assigned to the Panchayat Samiti by the Panchayats and Rural Development Department or devolved upon the Panchayat Samiti by any other Department of the State Government.

(6) The Executive Officer shall be responsible for supervision and monitoring of the progress of different development works taken up by the Panchayat Samiti.

(7) Subject to the general control and supervision of the Panchayat Samiti, the Executive Officer shall be responsible for –

(a) preparation of development plan for five year term and an annual action plan for each year for achieving economic development and ensuring social justice;

- (b) preparation of budget of estimated receipts and payments for the following financial year and revised and supplementary budget estimates for the current financial year;
- (c) exercising administrative control and supervision over the establishment of the Panchayat Samiti, the employees borne in the establishment of the Panchayat Samiti and such officers or other employees as the State Government may place under the functional control of the Panchayat Samiti;
- (d) receipt of contributions and grants released by the Central or the State Government or by any local authority;
- (e) custody of the Panchayat Samiti fund in Treasury and Bank;
- (f) all actions relating to realisation of tolls, rates and fees as may be levied by the Panchayat Samiti and all other fund as may be received by or on behalf of the Panchayat Samiti;
- (g) preparation of bye-laws;
- (h) realisation of fines and penalties as may be imposed by the Panchayat Samiti;
- (i) maintaining and keeping in proper custody all the records including all books of accounts of the Panchayat Samiti;
- (j) signing the cash book and examining and, if necessary, reconciling the Panchayat Samiti Pass Book issued by the Treasury or Bank from time to time;
- (k) maintaining the accounts of Panchayat Samiti and preparation of its monthly receipt-payment accounts;
- (l) acting as the Accepting Officer with respect to Annual Proforma Reports of all employees of the Panchayat Samiti;
- (m) maintaining co-ordination among the Block level officers in all matters relating to the execution of schemes and works approved by the Panchayat Samiti and its Sthayee Samitis;
- (n) issuing necessary directions to the Block level officers for the execution of the schemes and works according to the decisions taken by the Panchayat Samiti and, its Sthayee Samitis in the meeting;
- (o) obtaining progress reports from the Block level officers about the execution of such schemes and works and submitting the same to the Panchayat Samiti and its Sthayee Samitis with his comments;
- (p) maintaining liaison among the members and the officers of the Panchayat Samiti, the officers of different departments of the State Government and different non-government and other community-based organisations working in the area under its jurisdiction in order to achieve a co-ordinated approach and convergence of diverse activities in their efforts in different fields of economic

and social development in the area and assisting the Sabhapati in maintaining such liaison.

(8) The Executive Officer shall inspect or cause to be inspected the institutions under the management of the Panchayat Samiti and any work undertaken by the Panchayat Samiti or a Sthayee Samiti thereof. He shall also inspect or cause to be inspected the office and works of the Gram Panchayats and the institutions managed by them. The Executive officer shall submit reports of such inspections to the Panchayat Samiti through the Sabhapati.

(9) The Executive Officer shall take effective steps to maintain linkage with the plans and programmes of the Panchayat Samiti and those of the Gram Panchayats within its jurisdiction so that such programmes do not have any conflicting outcome and are mutually supportive and complimentary for achieving the common goal of integrated development and for this purpose, he shall monitor such programmes and inspect the offices of the Gram Panchayats as also programmes and schemes implemented by them."

Section 197 of the Code of Criminal Procedure, lays down:-

"197. Prosecution of Judges and public servants.-

(1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction.

(a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;

(b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government: Provided that where the alleged offence was committed by a person referred to in clause (b) during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force in a State, clause (b) will apply as if for the expression "State Government" occurring therein, the expression "Central Government" were substituted.

(2) No Court shall take cognizance of any offence alleged to have been committed by any member of the Armed Forces of the Union while acting or purporting to act in the discharge of his official duty, except with the previous sanction of the Central Government.

(3) The State Government may, by notification, direct that the provisions of sub-section (2) shall apply to such class or category of the members of the Forces charged with the maintenance of public order as may be specified therein,

wherever they may be serving, and thereupon the provisions of that sub-section will apply as if for the expression "Central Government" occurring therein, the expression "State Government" were substituted.

(3A) 1 Notwithstanding anything contained in sub-section (3), no court shall take cognizance of any offence, alleged to have been committed by any member of the Forces charged with the maintenance of public order in a State while acting or purporting to act in the discharge of his official duty during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force therein, except with the previous sanction of the Central Government.

(3B) Notwithstanding anything to the contrary contained in this Code or any other law, it is hereby declared that any sanction accorded by the State Government or any cognizance taken by a court upon such sanction, during the period commencing on the 20th day of August, 1991 and ending with the date immediately preceding the date on which the Code of Criminal Procedure (Amendment) Act, 1991 (43 of 1991), receives the assent of the President, with respect to an offence alleged to have been committed during the period while a Proclamation issued under clause (1) of Article 356 of the Constitution was in force in the State, shall be invalid and it shall be competent for the Central Government in such matter to accord sanction and for the court to take cognizance thereon.

(4) The Central Government or the State Government, as the case may be, may determine the person by whom, the manner in which, and the offence or offences for which, the prosecution of such Judge, Magistrate or public servant is to be conducted, and may specify the Court before which the trial is to be held."

Vide order dated 08.02.2019, the Magistrate issued a non bailable warrant against the B.D.O., who had duly intimated the court well in advance about his inability to attend due to duty related to election. The learned Advocate for the complainant stated before the magistrate that the B.D.O. had shown disrespect by sending the intimation through a memo.

It is the view of this Court that it was the duty of the Magistrate to show some restraint in such a situation as such a technical issue is not a ground to issue a non bailable warrant against a public servant on election duty.

The said order is clearly an abuse of the process of law/court and is thus liable to be set aside in the interest of justice.

A public servant in course of his official duty, in his own office with few office staff, where admittedly a delegation of 500 persons was present from the side of the complainant, could not possibly have the courage/scope to commit the offences alleged.

The Supreme Court in the case of Tarkeshwar Sahu vs State of Bihar, Appeal (Crl) 1036 of 2005, on 29th September, 2006, laid down the ingredients required to prove charge under Section 354 IPC.

The Court held that:-

".....The ultimate test to ascertain if the modesty of a woman has been outraged is that the action of the offender should be such that it may be perceived as one which is capable of shocking the sense of decency of a woman....."

There is prima facie no such act/action on the part of the petitioner to make out a case against him of the offences alleged.

In State of Haryana and Ors. Vs Bhajan Lal and Ors., 1992 Supp (1) SCC 335, Civil Appeal No. 5412 of 1990, on 21.11.1990, the Supreme Court held:-

"102.....

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused."

Considering the facts as discussed above, the compliance of section 197 Cr.P.C. is applicable in this case.

Thus the following guideline in State of Haryana and Ors. Vs Bhajan Lal (Supra), becomes applicable in this case.

"102.....

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party."

Accordingly this is the fit case where the inherent powers of this court should be exercised in the interest of Justice to prevent the abuse of the process of law/court.

CRR 597 of 2019 is allowed.

The proceedings being Complaint Case No.C-668 of 2018 under Sections 323/325/379/354/506/120B/34 of the Indian Penal Code now pending before the learned Additional Chief Judicial Magistrate, Basirhat, North 24 Parganas, including all orders therein is quashed.

There will be no order as to costs.

All connected Application stand disposed of.

Interim order if any stands vacated.

Copy of this judgment be sent to the learned Trial Court forthwith for necessary compliance.

Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.