
(2006) 04 CAL CK 0056
In the Calcutta High Court
Case No : C.R.R. No. 416 of 2006

Chanchal Kumar Sanyal and Others

APPELLANT

Vs

State of West Bengal and Another

RESPONDENT

Date of Decision : 28-04-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 320(9), 401, 482
Penal Code, 1860 (IPC) — Section 34, 406, 409, 420

Citation : (2006) 3 CALLT 640 : 111 CWN 133

Hon'ble Judges : Sailendra Prasad Talukdar, J

Bench : Single Bench

Advocate : Shibdas Banerjee, Suman De and Navanil De, for the Appellant; Himangsu De and Sandip Kundu for Opposite party No. 2 and S.S. Roy, for the Respondent

Judgement

Sailendra Prasad Talukdar, J.—Petitioners in this case by filing an application u/s 401 read with Section 482 of the Criminal Procedure Code sought for quashing of the proceeding in connection with Khanakul P.S. Case No. 64 dated 27.06.2004 under Sections 406/420/409/34 of the Indian Penal Code.

2. Grievances of the petitioner, as ventilated in the application, may briefly be states as follows:

Petitioner No. 1 is the Manager of a Co-operative Milk Society in the name and style of "Damadar Co-operative Milk Union Limited". Petitioners No. 2 to 4 are associates of the said society.

3. On 27.06.2004 the opposite party No. 2, Ram Prosad Ghosh, lodged a complaint against the present petitioners. It was alleged that the complainant was a milkman by occupation. He along with others used to supply milk to the society, Damadar Co-operative Milk Union Limited. The petitioner No. 1 and others of the society used to buy milk from the complainant and others. On 10.06.2004, the petitioners stopped buying of milk from the present petitioners

without any prior intimation. It was alleged that the present O.P. No. 2 and others supplied milk to the extent of 77,431.5 litres which was of the value of Rs. 7,74,315/- only.

4. It was further alleged that as a result of such unilateral decision of not buying milk from the O.P. No. 2 and others, they were put into terrible financial distress. After completion of investigation of the said case Police authority submitted charge sheet No. 118/05 dated 31.08.2005 under Sections 406/420/409/34 of Indian Penal Code. On 16.11.2004 the O.P. No. 2 and the present petitioners filed a compromise petition before the learned Court of Sub-Divisional Judicial Magistrate, Arambagh, Hooghly stating therein that the said case was filed on misunderstanding and the dispute between the parties was settled amicably.

5. It was further claimed that the O.P. No. 2 herein did not want to continue with the case under reference. A compromise petition dated 16.11.2004 was filed to that effect. The present O.P. No. 2 filed an affidavit stating that he was not having any grievances against the present petitioners. An application for discharge of the petitioners/accused persons was filed on 23.12.2005. Learned Court, however, without considering the said application fixed 20.04.2006 as the next date for appearance of the accused persons as well as for supply of copies.

6. Learned counsel, Mr. Shibdas Banerjee, appearing for the petitioners submitted that in the changed circumstances arising out of amicable settlement of the dispute between the parties, continuation of the proceeding under reference will be an abuse of the process of the Court. Mr. Banerjee invited attention of the Court to the developments which took place subsequent to lodging of the complaint by present O.P. No. 2. Attention of the Court was drawn to the fact that even the Investigating authority mentioned in its report that he contacted the complainant and asked him to supply further witnesses but the complainant stated that he would not proceed with the case further. In fact, it is further mentioned in the said report that the complainant also produced a copy of the compromise petition.

7. Mr. Himangsu De, who appears as learned Counsel for the Private Opposite Party No. 2 frankly submits that in view of the settlement arrived at between the parties, there can be no justification for allowing the case to proceed further. Mr. De also referred to the decision in the case of *Jasoda Glass & Silicate and Ors. v. Regional Provident Fund Commissioner and Ors.* reported in 2002(2) CHN 407, and submitted that this Court can very well pass an order directing quashing of the proceeding after taking into consideration the subsequent developments.

8. Reference was also made by learned Counsel Mr. De to the decision in the case of *Badrilal v. State of Madhya Pradesh* reported in 2005 SCC (Cri) 1597.

9. Learned counsel for the opposite party/State, Mr. S.S. Roy, referred to the decision in the case of *Karpoort Thakur v. Baikunth Nath Dey and Anr.* reported in 1990 SCC (Cri) 642, in support of his contention that offences alleged being non-compoundable, there can be no question of quashing of proceeding in exercise of

this Court's power u/s 482 of the Code of Criminal Procedure. In the said case the Apex Court, however, observed that in the circumstances of the case it would not serve any useful purpose to direct the prosecution to continue, nor would such a prosecution be in the public interest. Attention of the Court was drawn to the decision in the case of Surendra Nath Mohanti and Anr. v. State of Orissa reported in 1999 SCC (Cri) 998. Relying upon the said Judgment Mr. Roy submitted that compounding of non compoundable offence is not permissible. The facts and circumstances of the present case, however, are significantly different and question of compounding of the offences in this case also could hardly arise.

10. In this context Mr. Roy further referred to the decision in the case of Bankat and Anr. v. State of Maharashtra reported in 2005 SCC (Cri) 316. In the said case it was clearly held by the Apex Court that Sub-section (9) of Section 320 specifically provides that "no offence shall be compounded except as provided by this section." In view of the aforesaid legislative mandate, "only the offences, which are covered by Table 1 or Table 2, provided u/s 320, can be compounded and the rest of the offences punishable under the IPC cannot be compounded.

11. Similar view was also taken by the Apex Court in the decision in the case of Kamma Otukunta Ram Naidu v. Chereddy Pedda Subba Reddy reported in 2005 SCC (Cri) 849. Though referred to by Mr. Roy, learned Counsel for the opposite party/State, the facts and circumstances of the case of Binoy Talukdar and Ors. v. Sri Amit Dutta and Anr. reported in 2004 Cr LR (Cal) 101, are significantly different.

12. It is, no doubt, a fact that this Court as well as the Apex Court in various cases allowed the prayer for quashing of proceeding where the facts, and circumstances of the case revealed that no useful purpose would be served by allowing the case to proceed. In fact, attention of the Court was drawn to an unreported judgment of this Court in the case of Najma Khatoon and Ors. v. State of West Bengal and Ors. in connection with C.R.R. No. 2395 of 2005.

13. It was urged that in case of matrimonial disputes, the Court cannot afford to ignore the subsequent development in the form of amicable settlement between the parties and though non compoundable, in such backdrop, order directing quashing of proceeding in case of amicable settlement of the dispute can very well be justified. According to Mr. Roy, the present case stands in a distinctly different footing. There is no doubt that force in the submission made on behalf of the opposite party/State. The fact, however, remains that in the unequal battle between the parties in the present case, the present petitioners have been eager to settle the matter with the opposite party No. 2. Such eagerness was reflected time and again as could be found from the report of the investigating officer. In fact, otherwise the petitioners are likely to be put into terrible financial distress. In such backdrop, if the Court shuts its eyes from such a settlement, and allows the case to proceed further, it will be nothing short of encouraging the present petitioners to come with stories, which would not and in the materials available

in the case dairy. There can be little justification in compelling the present petitioners to take a different stand on oath. Moreover, allowing the parties to effect such a settlement will certainly not be prejudicial to the public interest.

14. Considering these facts and circumstances I am inclined to hold that continuation of the present proceeding will virtually be a wild goose chase and is not like to serve any fruitful purpose. In fact, it will be an abuse of the process of Court.

15. In such circumstances, the present application u/s 482 of the Code of Criminal Procedure, being CRR 416 of 2000 be allowed. The proceeding arising out of Khanakul P.S. Case No. 64 dated 26.6.2004 (G.R. Case No. 345) now pending before the learned Court of A.C.J.M., Arambugh, Hooghly, be quashed. The accused persons, if on bail, be discharged from their respective bail bonds. The petitioners are directed to communicate this order to the learned Court below for information and necessary action within a period of four weeks from today.

Department is hereby directed to supply xerox certified copy of this Judgment, if applied for, to the learned Counsel for the parties, as expeditiously as possible.