(2010) 07 CAL CK 0046

In the Calcutta High Court

Case No : C.R.R. No''s. 1222 and 1541 of 2009

Dipankar De and Another — APPELLANT

Vs

The State of West Bengal — RESPONDENT

Date of Decision : 06-07-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 401, 482
Penal Code, 1860 (IPC) — Section 120(B), 182, 193, 201, 211

Citation : (2010) 07 CAL CK 0046

Hon'ble Judges : Kalidas Mukherjee, J

Bench : Single Bench

Advocate : Milon Mukherjee, Saibal Mondal and Ainul Haque, for the Appellant;Kasem Ali Ahmed, for the Respondent

Final Decision : Dismissed

Judgement

Kalidas Mukherjee, J.—These are the two applications u/s 401 read with Section 482 of the Code of Criminal Procedure for quashing of the proceedings in G.R. case No. 960 of 2008 pending before the learned Metropolitan Magistrate, 5th Court, Kolkata arising out of Hare Street Police Station/D.D. case No. 194 dated 09.4.2008 under Sections 120B/182/193/201/211/419/467/468/471 of Indian Penal Code. The learned Metropolitan Magistrate passed an order dated 24.11.2008 rejecting the application filed by the accused/petitioners praying for discharge from the instant case. By another order dated 6.3.2009 the learned Metropolitan Magistrate fixed a date for the framing of charges under Sections 120B/467/468/471 of the Indian Penal Code.

2. Both the Revisional Applications have been taken up together and heard analogously. The case of the petitioners, in short, is that the Hare Street Police Station/D.D. case No. 194 dated 09.4.2008 was registered for investigation on the basis of a complaint lodged by the Registrar General, High Court, Calcutta. The case of the prosecution, in short, is that there is a church under the name and style "House of Prayer and Good News" at 16, Beniapukur Road, Kolkata -

700 014 having some landed property. The petitioner along with others are the members of the Board of Trustees. It is alleged that on 30.1.2004 the four members executed a General Power of Attorney in favour of accused Mousoomi De empowering her to look after all the matters relating to the Church. Thereafter a building was constructed on the said land of the Church. The writ petition being No. WP 2494(W) of 2008 was filed by the accused persons in the High Court at Calcutta against the Kolkata Municipal Corporation over the issue of drainage connection at the aforesaid newly constructed building. In the writ petition the Vokalatnama dated 4.2.2 008 and the Power of Attorney dated 30.1.2004 were filed. Edwin Aseem Kumar Bala made an allegation before the Hon''ble court by filing affidavit that he was neither willing to file the said writ petition nor authorized anybody to file the same on his behalf. He also alleged that his signatures were forged by somebody and, as such, the signatures appearing in the Vokalatnama as well as the Power of Attorney were not his signatures. The other accused persons, namely, Dipankar Dey, Mrs. Mousoomi De and Mrs. Bonhi Mondal, that is, the present petitioners disputed the contention of accused Edwin Aseem Kumar Bala by filing affidavit. His Lordship Hon''ble Justice Jayanta Kumar Biswas was pleased to pass an order on 25.2.2008 directing the Deputy Commissioner of Police, Detective Department, Kolkata police to start a specific case and to conclude the investigation within a period of two months. The Hon''ble Court also directed the Trial Court to conclude the Trial within three months from the date of submission of charge sheet. It is contended that the accused/petitioners are in no way connected with the alleged offence and they have been falsely implicated in this case. After completion of investigation, the charge sheet was submitted being charge sheet No. 243 of 2008 dated 25.9.2008 under Sections 120B/467/468/471 of the Indian Penal Code against the present petitioners and four others.

3. The petitioners filed an application before the learned Metropolitan Magistrate, 5th Court, Calcutta praying for discharge from the instant case. After hearing both sides the learned Metropolitan Magistrate was pleased to frame charge against the accused/petitioners under Sections 466/471/193 and 120B of the Indian Penal Code. Being aggrieved by the said order passed by the learned Metropolitan Magistrate the petitioners have preferred present Revisional Applications.

4. Mr. Mukherjee appearing for the petitioner submits that so far as accused Bonhi Mondal is concerned it would appear from the charge sheet at page 65 of the papers annexed with the application that the specimen signatures of the accused persons were taken and same were compared with the questioned documents and it was found that the specimen matched with the questioned Finger Impressions. Mr. Mukherjee submits that so far as the allegation raised in the writ petition is concerned, the documents were executed in the year 2002 which after comparison were found to have been matched with the questioned finger impression. Mr. Mukherjee further submits that during investigation it also transpired that in the year 2004 similar other documents were executed which

were called in question, but, accused/petitioner Bonhi Mondal was not in any way connected with the documents executed in the year 2004. Mr. Mukherjee thus contends that so far as Monhi Mondal is concerned there is no material to show that she was in any way connected with the alleged forgery. It is contended by Mr. Mukherjee that the learned Metropolitan Magistrate did not apply his judicial mind and accused Bonhi Mondal should be discharged.

5. The learned Counsel for the petitioners appearing in CRR 1541 of 2009 has adopted the argument advanced by Mr. Mukherjee. It is contended that the continuation of the proceedings before the learned Court below would be an abuse of the process of law and the same should be quashed.

6. Mr. Kasem Ali Ahmed appearing for the State submits that the accused/ petitioners have knowledge about the commission of forgery. Mr. Ahmed submits that at the stage of framing of charge it is not open to the leaned Magistrate to go into the merits of the matter so as to decide whether all the documents are forged or genuine and all the questions raised by Mr. Mukherjee will be decided at the time of trial. It is submitted that the accused petitioners intentionally and voluntarily committed forgery in collusion with others. It is submitted that there is no scope for quashing of the proceedings at this stage. Mr. Ali Ahmed has referred to and cited the decisions reported in 1996(8) SCC (Cri) 164 State of Bihar v. Rajendra Agarwalla; 2004 SCC (Cri) 118 M. Narayandas v. State of Karnataka and Ors.; 1999 C.Cr.L.R. SC 234 Rajesh Bajaj v. State NCT Delhi and Ors.; 1996 Cr.L.J. 2448 State of Maharashtra etc. etc. v. Som Nath Thapa; 2004 C.Cr.L.R. SC 127 State of Madhya Pradesh v. Awadh Kishore Gupta and Ors.

7. The F.I.R. was registered and after investigation the charge sheet was submitted under Sections 120B/182/193/201/211/419/467/468/471 of the Indian Penal Code. Mr. Mukherjee has drawn our attention to page 2 of the charge sheet wherein it has been stated thus:

The comparison report and opinion of Finger Print Bureau disclosed that the specimen finger impressions of the suspects namely Dipankar De, Mrs. Bonhi Mondal and Edwin Aseem Kumar Bala matched with the questioned Finger impressions. The finger impressions of Dilip Biswas appeared in the T.I. Register of 2002 & 2004 differed which reasonably indicated that the person, Dilip Biswas executed the ''Power of Attorney'' in 2002 did not execute the ''Power of Attorney'' in 2004 and the subsequent allegation made by Edwin Aseem Kumar Bala in respect of the forged signature of "Dilip Biswas" got weight and importance. But his main allegation made before the Hon''ble High Court as well as before this Investigating Agency became futile as his finger impressions not only matched with General Power of Attorney dated 3.1 0.2002 but also matched with the General Power of Attorney dated 30.1.2004.

8. The learned Magistrate after going through the materials on record held that a strong prima facie case was there and fixed a date for framing of the charge.

9. In the case of State of Maharashtra v. Som Nath Thapa (Supra) it has been

held that prima facie case must exist for the framing of charge and the probative value of statement of witness cannot be gone into at the stage of framing of charge.

10. In the case of State of Bihar v. Rajendra Agarwalla (Supra) it has been held that the power u/s 482 Cr.P.C. should be very sparingly and cautiously exercised while quashing the criminal proceeding at the initial stage. It has further been held that the High Court should not sift or appreciate the evidence and come to the conclusion that no prima facie case was made out.

11. In the case of Rajesh Bajaj v. State NCT of Delhi and Ors. (Supra) it has been held that it is not necessary that a complainant should verbatim reproduce in the body of his complaint all the ingredients of the offence as alleged. It has further been held that hyper- technical approach while exercising power u/s 482 Cr.P.C. is not required.

12. In the case of State of Madhya Pradesh v. Awadh Kishore Gupta and Ors. (Supra) it has been held that where the complaint does not disclose any offence, the annexures to the petition for quashing should not be taken into consideration. It has been held that while exercising jurisdiction u/s 482 of the Code of Criminal Procedure it was not permissible for the Court to act as if it was a Trial Judge.

13. In the case of M. Narayan Das v. State of Karnataka and Ors. (Supra) it has been held that the power u/s 482 Cr.P.C. must be exercised very sparingly and with circumspection and that too in the rarest of the rate cases and the Court cannot inquire about reliability or genuineness or otherwise of the allegations made in the F.I.R.

14. In the charge sheet it has been stated that during investigation Amit Kumar Bhatterjee frankly admitted that he signed as Dilip in the questioned ''General Power of Attorney" dated 30.1.2004 within the knowledge of all other executants including Edwin Aseem Kumar Bala being approached by Dipankar De and Mrs. Mousuni De. It has further been stated therein that the affidavits made by accused Dipankar De, Mrs. Mousoomi De and Bonhi Mondal regarding signature of accused Edwin Aseem Kumar Bala on the question "Vokalatnama" dated 4.2.2008 are false, because they knew that a signature of Edwin Aseem Kumar Bala was not genuine. It has further stated in the charge sheet that there was vital forgery in the said "General Power of Attorney" dated 30.1.2004 for which all the accused persons are responsible as they had direct knowledge regarding the commission of such forgery; the signature of one Dilip Biswas was forged and all the affidavit makers deliberately suppressed this fact before the Hon''ble High Court. It has been stated that accused No. 6 Amit Kumar Bhattacharjee @ Pintu knowingly took active part in making and using false and fabricated document as genuine being the members of criminal conspiracy in concert with other accused executants, namely, Dipankar De (accused No. 1), Mrs. Mousoomi De (accused No. 2) Mrs. Bonhi Mondal (accused No. 3) Edwin Aseem Kumar Bala (accused No.

4) and they were identified by Md. Khalid Masud (accused No. 5). It has been stated that all the accused persons had knowledge regarding the existence of the first ''Power of Attorney'' dated 3.10.2002 despite they dishonestly and fraudulently participated in executing the second ''Power of Attorney'' dated 30.4.2004 with some ulterior motive. It has further been stated that it transpired from the opinion of questioned document Examiner that the signature of Mrs. Bonhi Mondal marked as "Q 16" appearing on page No. 5 of the "Power of Attorney" dated 30.1.2004 was different from her specimen signature, hand writing and, as such, it was reasonably suspected that the said signature was done by somebody else and that was known to other accused persons. It has been stated that the other accused persons, namely, Dipankar De, Mrs. Mousoomi De and Mrs. Bonhi Mondal being the other writ petitioners in W.P. No. 2494 of 2008 deliberately suppressed the fact that the said "Power of Attorney" was fake one as it was executed under forged signatures of fictitious Dilip Biswas.

15. Mr. Mukherjee submits that so far as the documents of the year 2002 are concerned the specimen signatures of Mrs. Bonhi Mondal matched and, therefore, there is no material against her in this case. But, considering the fact that there is charge u/s 120B and in view of the allegation that all the accused persons acted in concert, I think that it would not be proper to enter into the merits of the matter regarding comparison of the signatures, especially when the learned Trial Judge has held that there was strong suspicion and decided to frame charge against the accused persons. It is not the case that the facts complained of do not constitute any offence. It cannot also be said that there is inherent improbability in the prosecution case. The opinion of the expert examining the specimen signatures are matters to be considered at the time of trial. At this stage entering into the merit of the matter is not permissible.

16. Having regard to the principles laid down in the aforesaid decisions and the circumstances of the case, I find that it is not a fit case for quashing of the proceedings.

17. In the result, both the Revisional Applications being CRR 1541 of 2009 and CRR 1222 of 2009 are dismissed. Interim order, if any, stands vacated.

18. Let a copy of this order be sent to the learned Court below immediately.

19. Urgent Photostat certified copy, if applied, for be handed over to the parties as early as possible.

