
(2000) 03 CAL CK 0043

In the Calcutta High Court

Case No : Criminal Revisional Jurisdiction, C.R.R. No. 79 of 2000

Gita Adhikary and Others

APPELLANT

Vs

The State of West Bengal

RESPONDENT

Date of Decision : 03-03-2000

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 207, 207A, 208, 209, 227
Penal Code, 1860 (IPC) — Section 201, 328

Citation : (2000) 2 CALLT 261

Hon'ble Judges : Amit Talukdar, J

Bench : Single Bench

Advocate : Md. Islam, for the Appellant; Kd. Kasem Ali Ahmed, for the Respondent

Judgement

A. Talukdar, J.—An Order of the learned Sub-Divisional Judicial Magistrate, Kalyani in connection with G.R. Case No. 140 of 1999 (arising out of Chakdaha Police Station Case No.42 dated 30.4.99) on 07.10.99 has prompted the petitioners to come up before this Court invoking Its jurisdiction under sections 397, 401 and 482 of the Code of Criminal Procedure. The Petitioners are aggrieved by the said Order on the premises that the materials as emerging from the Police Papers do not make out any case u/s 328 of the Indian Penal Code that there are serious discrepancies in the statements with regard to the date of the occurrence and also with regard to the description of the poison allegedly administered.

2. Shri Islam appearing on behalf of the Petitioner has submitted that there are no materials in the Police Papers which would make out a case of section 328 against the Petitioners and the Order of Commitment passed by the learned Magistrate should be set aside. He further submitted that the learned Magistrate although found that there was no examination of any food particles or the thala of which alleged poison was mixed and that the C.D. is absolutely silent about further attempt to collect additional Medical Report yet the commitment Order

was made which was not in consistent with the materials on record. He has relied on the decision of a learned single Judge of this Court as reported in 1999 C L R (Cal) 306 (Prasanta Kumar Goswami v. State and Others) to emphasis his point that the Magistrate should examine at the time of commitment the Police Papers and arrive at his conclusion whether it is a fit case for commitment and if, it is found that after examining the Police Papers the offence was disclosed is not exclusively triable by the Court of session or a wrong section has been quoted such commitment can be refused.

3. Shri Kasem Ali Ahmed, learned lawyer appearing on behalf of the State has supported the impugned Order of commitment and prayed before this Court for dismissal of the Revisional Application as there is sufficient material for proceeding against the accused after commitment.

4. I have considered the submission of Shri Islam very carefully and have also gone through the decision of Prasanta Kumar Goswami (supra) and I find that the Order of the learned Magistrate impugned before this Court should remain undisturbed. It cannot be said, after even a cursory glance through the statements recorded by the Investigating Agency u/s 161 which have been annexed with the Revision Application, helps one to arrive at the conclusion that there are absolutely no Ingredients of section 328 of the Indian Penal Code. The citation of Prasanta Kumar Goswami relied upon by Shri Islam has no manner of application in the present case since the materials emerging from the Police Papers to my mind contains sufficient ingredients of section 328 of the Indian Penal Code and the learned Magistrate was fully justified in committing the case to the Court of sessions as it has been rightly held by the learned Magistrate that the prima facie material for the offence of section 328 of the Indian Penal Code are there.

5. I am unable to persuade myself with the submissions of Shri Islam that the learned Magistrate ought to have evaluated the materials with more circumspection before passing the Order of commitment. From a plain reading of section 209 of the Code of Criminal Procedure it is absolutely clear that in a case instituted on a Police Report when the accused appears or is brought before the Magistrate and It appears to the Magistrate that the offence is triable exclusively by the Court of Sessions he shall commit the accused after compliance of the provisions of section 207 or section 208 of the Code of Criminal Procedure to the Court of Sessions. As such in view of the mandatory word shall I am afraid that the learned Magistrate has little or no option at all but to commit the case to the Court of Sessions when from the Police Papers the materials so emerges he cannot undertake a voyage of discovery and sift the materials for the purpose of analysing whether the materials Justify a Trial before the Court of Sessions. In other words he cannot embark upon an inquiry and hold a pre-committal hearing. If such be the position them I am very afraid that the provisions of section 227 of the Code of Criminal Procedure will be rendered totally nugatory.

6. I am tempted to rely on the well-known decision of the Supreme Court on this

point in the case of Sanjay Gandhi Vs. Union of India (UOI) and Others, The Supreme Court In the said decision had held that the committal Court cannot launch on a process of satisfying Itself whether a prima facie case has been made out on the merits. In the new Code there was no such discretion vested upon the learned Magistrate. The Hon''ble Mr. Justice V.R. Krishna Iyer for the Division Bench consisting of Jaswant Singh, J. held that: "Therefore to hold that he can go into the merits even for a prima facie satisfaction is to frustrate the Parliament''s purpose in remoulding section 207A (old Code) Into Its present non-discretionary shape. Expedition was Intended by this change and this will be defeated successfully If interpretatively we hold that a dress rehearsal of a trial before the Magistrate is in order. In our view the narrow Inspection hold through which the committing Magistrate has to look at the case limits him merely to ascertain whether the case, as disclosed by the Police Report, appears to the Magistrate to show an offence triable solely by the Court of Session. Assuming the facts to be correct as stated in the Police Report, If the offence is plainly one u/s 201 IPC, the Magistrate has simply to commit for trial before the Court of Session. If, by error, a wrong section of the Penal Code is quoted, he may look into that aspect. Shri Mulla submits if the Magistrate''s jurisdiction were to be severely truncated like this the prosecution may stick a label mentioning a Sessions offence (If we may use that expression for brevity''s sake) and the Accused will be denied a valuable opportunity to prove his ex facie innocence. There Is no merit In this contention. If made-up facts unsupported by any material are reported by the Police and a Sessions offence is made to appear, it is perfectly open to the Sessions Court u/s 227 Cr.PC to discharge the Accused. This provision takes care of the alleged grievance of the Accused."

In such view of the matter and the decision propounded by the Hon''ble Apex Court of the land settling the issue in question I do not find any merit at all in this Revisional Application and dismiss the same.

However, there will be no order as to costs.

7. Application dismissed