

(2015) 03 CAL CK 0051
In the Calcutta High Court
Case No : C.R.R. No. 2460 of 2014

Mitali Panda and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 20-03-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Criminal Procedure Code, 1973 (CrPC) — Section 155(2), 156(1), 161, 239, 401

Penal Code, 1860 (IPC) — Section 304-A, 34

Citation : (2015) 3 CHN 575 : (2015) CriLJ 2680

Hon'ble Judges : Shib Sadhan Sadhu, J.

Bench : Single Bench

Advocate : Sandipan Ganguly and Anand Keshari, for the Appellant; Sarjati Dutta, Advocates for the Respondent

Final Decision : Allowed

Judgement

Shib Sadhan Sadhu, J.—The petitioners, by means of the present petition under Section 401/482 of the Code of Criminal Procedure, 1973 seek to quash the entire proceedings and order dated 25.06.2014 passed in B.G.R. Case No. 4366 of 2010 under Section 304-A of the Indian Penal Code pending before the Court of the Learned Judicial Magistrate, 4th Court, Alipore, South-24-Parganas.

2. An FIR was lodged by the informant Chandan Karmakar (O.P. No. 2 herein) against two named accused (petitioner Nos. 8 and 9 herein) and others on 08.08.2010 for the offence punishable under Section 304-A/34 IPC. After investigation, a charge sheet was submitted against the present petitioners for the offence punishable under Section 304-A/34 IPC. Feeling aggrieved against the same, the petitioners filed a petition before the Learned Magistrate under Section 239 Cr.P.C. for discharge. The Learned Magistrate rejected such prayer and fixed a date for framing of charge. Being dissatisfied with such order, the present petition under Section 401/482 Cr.P.C. was filed by the petitioners.

3. As per the FIR, Master Srijit Karmakar who is the son of brother of the wife of

the de facto complainant was a student of Class-IX of ElBethel School of Raspuja, Kolkata-700104 and he participated in the educational excursion from 30.07.2010 to 07.08.2010 at Nainital under the State of Uttarakhand and travelled from school premises to that place. On 07.08.2010 at about 7 a.m. father of the said Srijit Karmakar received one phone call and came to know that some incident took place at/nearby Sonpur Railway Station while Srijit and other students were travelling in Bag Express (No. 3020) towards Howrah. He then informed the de-facto complainant and asked him to arrive at Behala and thereafter, he rushed to the place of incident at Sonpur. It was further alleged that the incident/accident happened due to the negligence of the petitioners and they are responsible for such mishap for which investigation should be conducted and the petitioners be punished. Annexure A (Pages 18 and 19) is the FIR in that case.

4. Mr. Anand Keshari, Learned Counsel appearing on behalf of the petitioners argued that the facts, stated in the written complaint, FIR and statements recorded under Section 161 Cr.P.C., even if accepted as it is, do not constitute offence under Section 304-A of the IPC. He contended further that the alleged facts and circumstances and the allegation made in the complaint and the case diary statements make out no offence at all far to speak of establishing an offence under Section 304-A IPC. Therefore, according to him, the essential ingredients of the offence of causing death by negligence as defined under Section 304-A of the IPC are not made out and the institution of the criminal proceedings is an abuse of process of law and attempt to use the police machinery to harass the innocent petitioners unnecessarily.

5. Mr. Sarjati Dutta, Learned Counsel appearing on behalf of the State fairly submitted that there is eyewitness account in the case diary which absolutely rules out the involvement of the petitioners with the alleged offence.

6. I have considered the submission made by the Learned Counsel for the parties and perused the entire materials available on record. I have also gone through the case diary carefully.

7. In its well-known decision in the case of State of Haryana and others Vs. Ch. Bhajan Lal and others, . The Hon"ble Supreme Court stated categories of cases by way of illustration wherein extraordinary power under Article 226 of the Constitution of India or inherent power under Section 482 of the Cr.P.C. could be exercised either to prevent abuse of the process of the Court or otherwise to secure the ends of justice, as below:

"102... (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an

investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(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.

(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.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge"

8. Let me now examine the contentions raised by the Learned Counsel for the parties in the light of principles enumerated in the aforesaid decisions, in order to find out whether a case of quashing criminal proceedings constituted upon FIR and charge sheet is made out so as to warrant interference by this Court invoking inherent power under Section 482 of the Code.

9. Section 304-A of the IPC lays down that whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

10. On a reading of the aforesaid Section, it is manifest that an offence of causing death by rash or negligent Act not amounting to culpable homicide necessarily involves the facts that (a) the accused caused the death of any person; (b) such death was caused by the accused doing any rash or negligent act and that (c) such death did not amount to culpable homicide. To establish the charge under the Section, the causing of the death of the deceased by some act of the accused which was rash and negligent and that the death is the direct result of such rashness or negligence of the accused have to be established by the prosecution and it must also be proved that the act was much more than simple negligence.

11. The entire allegations against the petitioners as stated in the written complaint and the case diary statements placed on record, revealed that the petitioners were the teachers of the school who conducted the educational excursion and that they accompanied the students and they were also travelling by that train. But there is no whisper that the alleged incident/accident took place due to any rash or negligent act on the part of the petitioners. On the contrary, it is revealed from the statement of the eyewitness who is also a student of the school and was a classmate of the deceased that he and Srijit (deceased) went to wash their hands in the bathroom before taking dinner. Thereafter Srijit came to his compartment and they gossiped for some time. At that time he saw that a teenager was hanging outside the door of the train compartment. Then he alongwith Srijit tried to rescue that boy. All on a sudden that boy turned around and dashed Srijit outside the train. Not only that he was also dashed outside by that boy. He lost senses. Thereafter he was rescued by local people. He sustained severe injuries.

12. Thus as per the aforesaid guidelines, if the proceedings/prosecution clearly appears to be abuse of process of law, then inherent power of this Court under Section 482 of the Cr.P.C. may be invoked. In the facts of the present case as discussed herein above, it is apparent that the ingredients of the offence under Section 304-A IPC are conspicuously missing. Therefore, the filing of the charge sheet being charge sheet No. 755 of 2012 dated 15.12.2012 before the Court of Learned Additional Chief Judicial Magistrate, Alipore, South 24-Parganas is clearly abuse of process of law and in my opinion, it is one of the rare of the rarest cases in which inherent powers under Section 482 of Cr.P.C. deserves to be invoked.

13. Consequently this petition is allowed. The entire Criminal Proceedings including the impugned order dated 25.06.2014 passed in B.G.R. Case No. 4366 of 2010 pending before the Court of the Learned Judicial Magistrate, 4th Court, Alipore, South 24-Parganas are therefore quashed. However, I make no order as to costs.

14. Criminal Section is directed to deliver urgent photostat certified copy of this judgment to the parties, if applied for, as early as possible.