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**(2006) 01 CAL CK 0020**  
**In the Calcutta High Court**  
**Case No : Writ Petition No. 1996 of 2000**

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| Narayandas Agarwala and Another     | Vs | APPELLANT  |
| The State of West Bengal and Others |    | RESPONDENT |

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**Date of Decision :** 09-01-2006

**Acts Referred:**

Constitution of India, 1950 — Article 226, 227  
Criminal Procedure Code, 1973 (CrPC) — Section 155(2), 156(1), 161, 173, 482  
Environment (Protection) Act, 1986 — Section 25, 6  
Explosives Act, 1884 — Section 5, 9B(1)(a)(b), 9B(1)(b)  
Penal Code, 1860 (IPC) — Section 120B, 188, 34, 467, 468

**Citation :** (2006) 01 CAL CK 0020

**Hon'ble Judges :** Pratap Kr. Ray, J

**Bench :** Single Bench

**Final Decision :** Dismissed

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## Judgement

Pratap Kr. Ray, J.—In this writ application the writ petitioners who are the charge sheeted accused persons in connection with Case No. GR/1151 of 2000 arose out of reference section E/D.D. Case No. 204 dated 5th June, 2000 under sections 120B/188/467/468/471 IPC and 9(B)(1)(a)(b) of Indian Explosive Act have challenged the charge sheet No. 170 of 2000 dated 27th July, 2000 as submitted by the Investigating Officer u/s 173 of the Code of Criminal Procedure and under sections 120B/188/467/468/471 IPC and thereby prayed for the following relief"s:

(b) A writ and/or order or orders and/or direction in the nature of Mandamus commanding the Respondents whether by themselves or through their servants, subordinates, agents and/or transferees to desist from the mala fide and malicious investigation, and not to take any step or further steps in pursuance thereto in connection with section E, Case No. 204 dated June 5, 2000 corresponding to G.R. Case No. 1151 pending on the file of the learned 8th Metropolitan Magistrate, Calcutta;

(c) A writ and/or order or orders and/or directions in the nature of a writ of Certiorari commanding the respondent whether by themselves or through their servants, subordinates, agents, and/or transferees to certify to this Hon'ble Court all the records of the case i.e. section-E, Case No. 204 dated June 5, 2000 and G.R. Case No. 1151 of 2000 pending on the file of the learned 8th Metropolitan Magistrate, Calcutta so that conscionable justice may be done by quashing the same;

(d) A writ and/or order or orders and/or directions in the nature of Mandamus commanding the Respondents whether by themselves or through their servants, subordinates, agents and/or transferees not to give any effect to the orders dated June 8, June 13, July 27, 2000 passed by the learned Additional Chief Metropolitan Magistrate, Calcutta and Order dated July 27, 2000 passed by the learned 8th Metropolitan Magistrate, Calcutta and to the charge sheet dated July 27, 2000. In G.R. Case No. 1151 of 2000 arising out of section-E, Case No. 204 dated June 5, 2000;

(e) An order or direction upon the 8th Metropolitan Magistrate, Calcutta, not to proceed with and/or give effect to and/or take any other action on the basis of the purported investigation, charge sheet and taking of the cognizance by him;

(f) Rule Nisi in terms of prayers b, c, d and e above;

2. This writ application has been opposed by the State respondents including the Investigating Officer of this case. It is the case of the writ petitioners who are two in numbers that they are brothers and engaged in the business of transportation of goods in partnership under the name and style "New Haryana Transport Company", whose administrative office is situated at 10, Phears Lane, Calcutta - 12 and godowns booking centers in Calcutta are located at 155C, Mahatma Gandhi Road, Calcutta-7; 34 Jotindra Mohan Avenue, Calcutta-6 and 28, B.T. Road, Calcutta - 2 and in addition to that 35 branch office and booking centers cum godowns are situated in various places all over the country. The firm is engaged in carrying the goods of different Governments and Government undertakings and of different Government Authorities including the goods of different corporate houses, which are detailed in paragraph 5 and 6 of the writ application.

3. On 5th June, 2000 some persons attached to the office of the Bomb Disposal Squad, Detective Department, Calcutta Police having their office at Lalbazar, Calcutta, raided the godown of the firm situated at 155C, Mahatma Gandhi Road, Calcutta - 6 and seized 35 sealed cartoons allegedly containing "prohibited" firecrackers and thereby arrested one Sri Suresh Kumar Joshi, a staff of the godown on alleged commission of offence punishable u/s 9B(1)(b) of the Explosives Act read with section 188 of the Indian Penal Code. Initially, Jorasanko Police Station Case No. 204 dated 5th June, 2000 u/s 9B(1)(b) of the Explosives Act, 1884 read with section 188 of the Indian Penal Code was started on the basis of the information of one Sri S.C. Sarkar, Sub Inspector of Police attached

with Bomb Disposal Squad, Detective Department, Calcutta. Subsequently on the application praying addition of charges under sections 120B/467/468/471 IPC and 9B(1)(a) of Indian Explosives Act as submitted before the learned Court of Additional Chief Metropolitan Magistrate, Calcutta, such prayer was allowed. Ultimately on investigation by the Investigating Authority, the charge sheet was submitted under the aforesaid section as already referred to. The said charge sheet is under challenge.

4. Learned Advocate for the petitioners has contended that there was no violation of section 188 of the Indian Penal Code as the alleged violation of guideline and direction framed by the West Bengal Pollution Control Board, fixing the noise level of firecrackers at the time of busting to the extend of more than 90 D.B. C.S.(A) impulse noise at the 5 meters distance from the source earmarking the same as prohibited and banned fire works by specifying the fire works, namely, chocolate bomb, crackers, phatka etc., has no applicability in view of the fixation of the noise level of the firecrackers by the Central Government in exercise of the power conferred by sections 6 and 25 of the Environment (Protection) Act, 1986 by notifying the notification in the Gazette of India at its extraordinary publication dated 5th October, 1999 by fixing the noise standards for firecrackers generating noise level exceeding 125 dB(AI) or 145 dB(C)pk at 4 meters distance from the point of busting as prohibited articles. It is contended on that point that the order passed by the Pollution Control Board fixing the said guideline in terms of the Judgment of Calcutta High Court passed by the Division Bench fixing the maximum noise level below 90 D.B. has no applicability in view of Central Rule contrary thereof. It has been further contended that fire works is not prohibited article under the Explosives Act and petitioners are not manufacturing such fire works as their business is solely confined with the transportation of the goods of different persons.

5. It is contended that section 9B(1)(b) of Explosives Act has no applicability as the petitioners did not contravene section 5 deals with the conditions of a licence granted under the Explosives Act, 1884 as the fire works are not at all explosive. It has been further contended that the additional sections as added during pendency of the criminal case at the investigation stage, which was allowed by the learned Magistrate of the Court below was a motivated action to fulfill the grudge by the Investigating Officers as the petitioner did not pay any heed of their illegal request to cough-up huge amount of money as demanded.

6. Learned Advocate for the petitioner accordingly has invited the Court on the different sections of the concerned Act and has referred the Judgments, namely, State of Haryana and others Vs. Ch. Bhajan Lal and others, State of West Bengal and Others Vs. Swapan Kumar Guha and Others, , S.N. Sharma Vs. Bipen Kumar Tiwari and Others, , Nandini Satpathy Vs. P.L. Dani and Another, Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others, , State of Himachal Pradesh Vs. Dhanwant Singh, , R.P. Kapur Vs. The State of Punjab, , State of Karnataka Vs. L. Muniswamy and Others, , Roy V.D. v. State of Kerala, reported

in 2001 C Cr LR (SC) 177, State of Himachal Pradesh v. Prithi Chand, report in 1996 SCC (Cri) 210, State of Bihar and Another Vs. P.P. Sharma, IAS and Another, N.C. Nagpal & Ors. v. The State & Anr., reported in 1979(2) CHN 98, Minakshi Bala v. Sudhir Kumar & Ors., reported in 1994 SCC (Cri) 1181 and T. Barai Vs. Henry Ah Hoe and Another, in support of his case.

7. Hence, for effective adjudication of this matter, the Court has to consider whether at this stage when a charge sheet has already been submitted by the Investigating Officer u/s 173 of Criminal Procedure Code, the same could be quashed sitting in the writ jurisdiction. It is a settled law that quashing of the charge sheet filed u/s 173 of the Code of Criminal Procedure even before taking cognizance by the learned Magistrate amounts to "killing a still born child and same is nothing but pre-trial before the actual trial and by affidavit evidence in a writ proceeding and/or a proceeding u/s 482 of the Criminal Procedure Code if it is entertained same would amount to gross error being gravest in nature". Reliance may be placed to Judgment passed in the case State of Bihar and Another Vs. P.P. Sharma, IAS and Another, of said report being relevant is quoted hereinbelow:

68. The another crucial question is whether the High Court, in exercise of its extraordinary jurisdiction under Article 226 of the Constitution would interfere and quash the charge-sheet. The High Court found that the documents relied on by the respondents/ accused were not denied by the State by filing the counter-affidavit. Therefore, they must be deemed to have been admitted. On that premise the High Court found that there is no prima facie case was made out on merits and chances of ultimate conviction are "bleak". The Court is not passive spectator in the drama of illegalities and injustice. The inherent power of the Court under Article 226 of the Constitution of India is permitted to be resorted to. When the documents relied on by the respondents "demonstrate that no prima facie offence is made out on the face value of those materials, then the criminal prosecution should not be allowed to continue and so it should be quashed", and "in such a situation and circumstances the petitioners who had got a right under the Constitution for the protection of their liberty have rightly approached this Court and this Court in these circumstances has no option but to grant the relief by quashing the FIR and both the charge-sheets". Accordingly it quashed them. If this decision is upheld, in my considered view startling and disastrous consequence would ensure. Quashing the charge-sheet even before cognizance is taken by a Criminal Court amounts to "killing a still born child". Till the Criminal Court takes cognizance of the offence there is no criminal proceedings pending. I am not allowing the appeals on the ground that alternative remedies provided by the Code as a bar. It may be relevant in an appropriate case. My view is that entertaining the writ petitions against charge sheet and considering the matter on merit on the guise of prima facie evidence to stand on accused for trial amounts to pre-trial of a criminal trial under Article 226 and 227 even before the competent Magistrate or the Sessions Court takes cognizance of the offence. Once the proceedings are entertained the further

proceedings get stayed. Expeditious trial of a criminal case is the cardinal rule. Delay feeds injustice to social order and entertaining writ petitions would encourage to delay the trial by diverse tricks. It is not to suggest that under no circumstances a writ petition should be entertained. As was rightly done by Rajasthan High Court in this case at the instance of the directors of the company, wisdom lies to keep the hands back and relegate the accused to pursue the remedy under the Code. In several cases this Court quashed the criminal proceedings on the sole ground of delay. In a case, FIR filed in 1954 for violation of the provisions of the Customs Act and Foreign Exchange Regulation Act as challenged in the Allahabad High Court. It was deliberately kept pending in the High Court and in this Court till 1990. The accusation was violation of law by named persons in the name of non-existing firm. The FIR was quashed in the year 1990 by another Bench to which I was a Member solely on the ground of delay. He achieved his object of avoiding punishment. This would show that an accused with a view to delay the trial, resorts to writ proceedings, raises several contentions including one on merit as vehemently persisted by Sri Jain to consider this case on merits and have the proceedings kept pending. The result would be that the people would lose faith in the efficacy of rule of law. Documents relied on by the respondents are subject to proof at the trial and relevancy. If proved to be true and relevant that they may serve as a defence for the respondents at the trial. The State quite legitimately and in my view rightly did not choose to file the counter- affidavit denying or contradicting the version of the respondents, in those documents. The commission of offence cannot be decided on affidavit evidence. The High Court has taken short course "in annihilating the still born prosecution" by going into the merits on the plea of proof of prima facie case and adverted to those facts and gave findings on merits. Grossesst error of law has been committed by the High Court in making pretrial of a criminal case in exercising its extraordinary jurisdiction under Article 226. After the charge-sheet was filed, the FIR no longer remains sheet anchor. The charge-sheet and the evidence placed in support thereof form the base to take or refuse to take cognizance by the competent Court. It is not the case that no offence has been made out in the charge-sheets and the First Information Report. It is, therefore, not necessary to consider all the decisions dealing with the scope of the power of the High Court either u/s 482, Cr PC or Article 226 of the Constitution to quash the First Information Report.

69. The decision of this Court, strongly relied on namely, State of State of West Bengal and Others Vs. Swapan Kumar Guha and Others, , is of no assistance to the respondents. In that case it was found that the First Information Report did not disclose the facts constituting the offence.

70. Madhaorao J. Madhavrao Jiwajirao Scindia and Others Vs. Sambhajirao Chandrojirao Angre and Others, also does not help the respondents. In that case the allegations constitute civil wrong as the trustees created tenancy of Trust property to favour the third party. A private complaint was laid for the offence u/ s 467 read with section 34 and section 120B, IPC which the High Court refused

to quash u/s 482. This Court allowed the appeal and quashed the proceedings on the ground that even on its own contentions in the complaint, it would be a case of breach of trust or a civil wrong but no ingredients of criminal offences were made out. On those facts and also due to the relation of the settler, the mother, the appellant and his wife, as the son and daughter-in-law, this Court interfered and allowed the appeal. This Court found thus:

The Court cannot be utilized for any oblique purpose and where in the opinion of Court chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the Court may while taking into consideration the special facts of a case also quash the proceedings even though it may be at a preliminary stage.

Therefore, the ratio therein is of no assistance to the facts in this case. It cannot be considered that this Court laid down as a proposition of law that in every case the Court would examine at the preliminary stage whether there would be ultimate chances of conviction on the basis of allegation and exercise of the power u/s 482 or Article 226 to quash the proceedings or the charge sheet. In Sirajiddin's case the Madras High Court and this Court, though noticed serious infirmity committed in the course of investigation by the investigating officer did not quash the charge-sheet.

71. I am constrained to hold that the learned Judges have committed gravest errors of law in quashing the FIR and charge-sheets. Since the proceedings are yet to start I decline to go into the merits of the respective contentions, though vehemently argued by Shri R.K. Jain, on merits and Kapil Sibal in rebuttal since expressing any view either way would gravely prejudice the case of the accused or the prosecution. The appeals are allowed with no order as to costs.

8. The petitioners have urged the ground of mala fide but Court is not finding any cogent ground of such mala fide action save and except the contention that in a bailable case from the concerned Police Station, bail was refused and that purposely and motivated further section u/s 120B/467/468/471 of the Indian Penal Code and section 9B(1)(a)(b) of the Indian Explosives Act was added. In a nutshell, petitioner urged mala fide against the informant, namely, the Police Authorities, who raided the godown of the petitioner as well as mala fide action against the Investigating Authorities and the Court also who granted prayer of addition of new sections. It is a settled law that allegations of mala fide against the informant have no consequences and by itself it would not be the basis for quashing the criminal proceeding. Reliance may be placed to the Judgment passed in the case State of Madhya Pradesh Vs. Awadh Kishore Gupta and Others, wherein the Apex Court on considering the earlier Judgments in para 11 and 12 held to this effect:

11. ....When information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led

in the Court which decide the fate of the accused person. The allegation of mala fides against the informant are of no consequence and cannot by itself be the basis for quashing the proceedings, [see: Dhanalakshmi v. R. Prasanna Kumar, State of Bihar v. P.P. Sharma, Rupan Deol Bajaj v. Kanwar Pal Singh Gill, State of Kerala v. O.C. Kuttan, State of U.P. v. O.P. Sharma, Rashmi Kumar v. Mahesh Kumar Bhada, Satvinder Kaur v. State (Govt. of NCT of Delhi) and Rajesh Bajaj v. State of NCT of Delhi.]

12. These aspects were also highlighted in State of Karnataka v. M. Devendrappa.

9. The scope and ambit of writ jurisdiction to quash a criminal proceeding has now already been settled by the Judgment of the Apex Court passed in the case State of Haryana & Ors. v. Bhajan Lal & Ors., reported in 1992 suppl.(1) SCC 335. Paragraph 102 of the said report being a relevant consideration for adjudication of this case in quoted in extenso:

In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers u/s 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently canalized and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(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 u/s 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 u/s 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.

10. In the case Bhajan Lal (supra), the Apex Court considered earlier case being AIR 1945 18 (Privy Council) , R.P. Kapur Vs. The State of Punjab, , The Management of Advance Insurance Co. Ltd. Vs. Gurudasmal and Others, , Kurukshetra University and Another Vs. State of Haryana and Another, , State of Bihar and Another Vs. J.A.C. Saldanha and Others, , State of West Bengal and Others Vs. Swapan Kumar Guha and Others, , Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalgi and Others, , Pratibha Rani Vs. Suraj Kumar and Another, , Madhavrao Jiwajirao Scindia and Others Vs. Sambhajirao Chandrojirao Angre and Others, and State of Bihar Vs. Murad Ali Khan and Others, and crystallized the legal position by setting up guidelines though it may not be extensive but on general principle, the same practically is the guiding law in this field. In paragraph 103 of the said Bhajan Lal (supra) the Court held that the "power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest to rare cases".

11. It appears from the records that only charge sheet has been submitted u/s 173 of the Code of Criminal Procedure, which does not mean that the finality of the issue has been done about taking cognizance by the learned Magistrate with reference to the charge sheet. The charge sheet as submitted u/s 173 of the Criminal Procedure Code is only a Police Report after investigating the matter. Next stage is the stage of taking cognizance by framing the charge against the writ petitioners accused by the learned Magistrate of the Court below on perusal of the documents in support of the charge sheet as filed by the Investigating Officer, namely, the statements u/s 161 of the Criminal Procedure Code of the prosecution witnesses, the seizure list, the investigation report, FIR and other materials. Statutes provide that while taking cognizance of offence by the learned Magistrate, the accused will get an opportunity to submit. Hence, at the present juncture it is a pretrial stage and the issue is being thrashed when only a charge sheet has been submitted by the Police. It is settled law that in rarest to a rare cases, only to safeguard the innocent person to face unnecessary trial when no case is made out, the Writ Court would interfere. Present case is not of that category.

12. On analysis of the issue, this Court is of the view that no case has been made out, which could be termed as rarest to rare case and following the Judgment passed in the case Shri P.P. Sharma (supra), this Court is not inclined to interfere with the criminal proceeding as pending and which has already

reached to a stage where charge sheet has been submitted by the Investigating Officer. Considering all aspects of the matter, the writ application accordingly stands dismissed.

Petition dismissed.