

(2006) 11 CAL CK 0016
In the Calcutta High Court
Case No : C.R.R. No. 3250 of 2005

Nirmal Kumar Bhutoria and Another

APPELLANT

Vs

State of West Bengal and Another

RESPONDENT

Date of Decision : 27-11-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 482
Penal Code, 1860 (IPC) — Section 120B, 406, 420, 467, 468

Citation : (2007) 3 CHN 402

Hon'ble Judges : Rudrendra Nath Banerjee, J

Bench : Single Bench

Advocate : Jaymalya Bagchi, Ajay Shankar Sanyal and Kaushik Chatterjee, for the Appellant; Milon Mukherjee, Sudipto Moitra, P.K. Dewan and Sandipan Ganguly, for the Respondent

Final Decision : Dismissed

Judgement

Rudrendra Nath Banerjee, J.—This revisional application u/s 482, Cr. PC is for quashing the proceeding in G.R. No. 1170 of 2005 pending before the learned Additional Chief Metropolitan Magistrate, Calcutta arising out of Burrabazar Police Station case No. 203 dated 29th September, 2005 u/s 120B/467/468/420/506(II) of the Indian Penal Code.

2. The aforesaid P.S. case was on the FIR drawn up by police at the police station on the de facto complainant's complaint dated August 26, 2005 before the Officer-in-Charge, Barrabazar Police Station against Sri Nirmal Kumar Bhutoria read with the complaint dated 27th July, 2005.

3. The de facto complainant Kusum Bhutoria lodged the written, complaint dated 27th July, 2005 before the Officer-in-Charge, Burrabazar Police Station against Sri Nirmal Kumar Bhutoria with the allegation that the said Nirmal Kumar Bhutoria put the de facto complainant's signature on the partnership declaration form, the authorisation letter dated 5th October, 2004 and the account opening form and other bank papers for securing a loan from Tamilnad Bank Limited

situated at Ganesh Market Building (2nd floor), 58/D, Netaji Subhas Road, Kolkata -1. The loan was secured in the name of the firm M/s. Kesharichand Cjattarsingh of which the said Nirmal Kumar Bhutoria and Kusum Bhutoria both were partners along with three others. The said Kusum Bhutoria intimated the matter to the said bank by letter dated 4th March, 2005 and upon the bank's instruction he sent a representative to check the bank papers and being sure that her signatures were forged in the bank papers lodged such complaint before the Officer-in-Charge of Burrabazar Police Station.

4. The police having not started any case for the alleged forgery by the accused petitioner Nirmal Kumar Bhutoria the de facto complainant Kusum Bhutoria again wrote to the Officer-in-Charge of the Burrabazar Police Station by her letter dated 26th August, 2005 making the same allegation against the accused Nirmal Kumar Bhutoria alleging that he had forged her signature in the bank for securing loan of Rs. 24,50,000/- for the firm. In the letter the details of the offence alleged and also some other allegations of criminal intimidation were made.

5. Upon such allegations made in both the petitions of complaint the Officer-in-Charge, Burrabazar Police Station drew up the FIR No. 203 dated 29th September, 2005 against Nirmal Kumar Bhutoria and three others.

6. The de facto complainant again filed complaint case being No. C/776/05 before the Court of learned Additional Chief Metropolitan Magistrate, Calcutta for alleged offences u/s 420/406/467/468/471/120B of IPC against Nirmal Kumar Bhutoria and others. It was prayed that the said complaint be referred to the Burrabazar Police Station for investigation u/s 156(3), Cr. PC/ But learned Court called for a report from the police station and it was reported by police that the FIR has already been drawn up and investigation has been started upon the letter of complaint dated 26th August, 2005 read with letter dated 27th July, 2005.

7. Mr. Jaymalya Bagchi, Advocate appearing for the petitioner has contended that the said FIR being not registered on the earlier letter of complaint dated 27th July, 2005 disclosing the alleged offence of forgery, the entire proceeding is liable to be quashed as bad in law.

8. Mr. Jaymalya Bagchi, Advocate cited the decision reported in T.T. Antony Vs. State of Kerala and Others, in support of his contention that when two complaints have been lodged before police the police cannot choose one of them but is to draw up the FIR on the earlier one. In the cited decision two FIR were drawn up by police over the selfsame occurrence, the earlier complaint being a telegram or phone call and the subsequent are being a concrete and a written one making the selfsame allegation. But here in the present case in our hand, even if we accept that the subsequent one was with developed and subsequent event upon the cognizable offence earlier complained of, the earlier one was not taken cognizance of and no FIR was drawn up on the earlier letter of complaint

only. Rather the FIR was drawn up both the complaints. Thus the cited decision is not applicable to the present set of facts.

9. Mr. Bagchi also cited decision reported in 2006(1) C Cri. LR 366, Sk. Abdus Samim @ Pintu and Ors. v. State of West Bengal and Anr. in support of his contention. In the cited decision two criminal accusations and proceedings over the selfsame incident were filed. One of them was filed directly at one police station and the other at Court in another State. Learned Single Judge of this Court was pleased to quash the later case in revision. Here also the facts of the cited decision does not come to much help of the petitioner. Rather, it may be noted, in the present case the subsequent case u/s 156(3), Cr. PC has been dropped due to the very fact that FIR was already been drawn up and the investigation was started over the selfsame incident.

10. Mr. Bagchi has also argued that the allegation against the petitioner No. 2 both in letters of complaint dated 27th July, 2005 and 26th August, 2005 are patently absurd and inherently improper and the same again could not give rise to reasonable suspicion of commission of cognizable offence by him. Now the police having drawn up the FIR on both the petitions of complaint dated 27th July, 2005 and 26th August, 2005 and such investigation having progressed but not being complete it cannot be said whether any case has been made out against the petitioner No. 2 or not. It should be kept in mind that FIR is not an encyclopedia with all the details of the incident, it is the investigating agency which has to find how far such allegations have been established to enable such investigating agency to submit a charge-sheet. Thus when the FIR has already been drawn up it is not just and proper to infer at this stage as to whether any reasonable suspicion has been made against the petitioner No. 2.

11. Mr. Bagchi, Advocate also cited the decision reported in State of Haryana and others Vs. Ch. Bhajan Lal and others, in support of his contention. But it will be premature to observe at this stage that the petitioner No. 2 was not at all involved in any such conspiracy of forgery when the firm; itself applied for the loan with the alleged forged bank-documents, specially when the petitioner No. 2 is a partner of the said firm which sought for the loan.

12. Mr. Bagchi has in submitting the written arguments also cited the decisions reported in 1990 Cri. LR 1, J. Th. Zwart and Ors. v. Indrani Mukherjee 2005(7) SCC 69: 2005(2) Cri. LR 455, Vijaya Rao v. State of Rajasthan and Anr. in support of his contention. But on perusal of such decisions it appears that such decisions are not applicable to the present case due to difference of facts. The decision reported in Indian Oil Corporation Vs. NEPC India Ltd. and Others, cited from the end of the petitioner does not come to much help of the petitioner as it is not clear case of abuse of process of Court. The power of quashing the proceeding is to be sparingly used and with abundant caution.

13. Mr. Sudipto Moitra, learned Advocate appearing for the private respondents urged that the subsequent petition of complaint could have been taken as

evidence collected by police, had the police drew up the FIR on the earlier complaint. But it cannot be said that police while drawing up the FIR on the basis of both the letter of complaints the defence is prejudiced in any way.

14. It has been further contended by Mr. Moitra, Advocate that the investigation having already started the Court should not interfere in the matter of investigation and quash the proceeding u/s 482, Cr PC. In this connection Mr. Mukherjee cited decisions reported in 1974 SCC 558, Jehan Singh v. Delhi Administration and 2006(2) SCC 272, State of Orissa and Anr. v. Saroj Kumar Sahoo. The ratio of those two cases lends support to the contention of Mr. Moitra.

15. Mr. Moitra, Advocate has also cited the decision reported in 2006(2) SCC 310 : 2006(2) Cri. LR 11, Minu Kumari and Anr. v. State of Bihar and Ors. and has argued that quashing of criminal proceeding u/s 482, Cr. PC is to prevent abuse of process of Court and here in the present case no abuse of Courts' process is made. In view of such decision, while exercising powers u/s 482 Cr. PC the Court does not function as a Court of Appeal or Revision. In exercise of the powers under that section the Court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of process of Court or quashing of these proceedings would otherwise serve the ends of justice. But I find that by continuance of such proceeding neither there will be any abuse of process of Court nor will it serve otherwise the ends of justice.

16. It appears on consideration of the respective cases of both sides that the defence cannot be said to have been prejudiced by such investigation by police upon the single FIR drawn on the basis of the letter of complaint dated 26th August, 2005 read with the letter of complaint dated 27th July, 2005. After all the police did not draw the FIR upon one of those letters of complaint ignoring the other. If police does not register any case upon the earlier letter of complaint or makes any delay to do the same the de facto complainant cannot be made to suffer.

17. In any view of the matter I do not find any reason to interfere in the investigation of the case or to pass an order quashing the proceeding before the learned Court below in exercise of the powers conferred u/s 482, Cr PC.

18. Accordingly, the revisional application is dismissed.

19. There shall be no order as to costs.