

(2019) 09 CAL CK 0008

In the Calcutta High Court

Case No : Criminal Revision (CRR) No. 3463 Of 2015

Nitai Chandra Das & Ors @APPELLANT @ State Of West Bengal & Anr

Date of Decision : 03-09-2019

Acts Referred:

Indian Penal Code, 1860 — Section 34, 384, 411
Customs Act, 1962 — Section 106, 155
Code Of Criminal Procedure, 1973 — Section 167(5)(iii), 197, 197(i)

Citation : (2019) 09 CAL CK 0008

Hon'ble Judges : Madhumati Mitra, J

Bench : Single Bench

Advocate : Milan Mukherjee, Rudra Jyoti Bhattacharjee, Debjani Ghosal, Santanu Talukdar, Rana Mukheree, Debjani Sahu

Final Decision : Allowed

Judgement

Madhumati Mitra, J

This is an application under Section 482 of the Code of Criminal Procedure filed by the petitioners praying for quashing of Charge-sheet being no. 220/13 dated 21st June, 2013 including the order of taking cognizance on dated 16th February, 2015 in connection with the criminal proceedings being G.R. Case No.2034 of 2010 under Sections 384/411/34 of the Indian Penal Code pending before the learned Additional Chief Judicial Magistrate, Jangipur, Murshidabad.

Before dealing with the rival submissions of the parties, it would be appropriate to set out the facts briefly.

The petitioners were the officials of Customs Department, Jangipur, Murshidabad at the material point of time. The Additional Commissioner of Customs by a circular being No. VIII (48)04/CUS/P/WB/Tech/10/Part-1 dated 10.08.2010 issued alert notice regarding detention of fake Indian currency notes smuggled to India through land customs borders. Such notice was forwarded to the Assistant Commissioner of Customs Krishnagar Custom Division. The copy of the said circular was forwarded to present petitioner-1, the superintendent of customs for compliance. Annexure-P/1 is the copy of the said circular dated 10th August,

2010.

On 18.09.2010 the Janigipur Customs Preventive Unit on the basis of a specific intelligence/information regarding smuggling of fake currency notes, formed a team of the officers, to conduct preventive duty at National Highway 34. The present petitioners were the members of that team. Annexure-P/2 is the copy of the said order. On 8.9.2010 at about 13 hours while the petitioners were performing their preventive duty at the end of the Ahiran Bridge found two small vehicles having registration numbers identical to the secret information were approaching towards Ahiran Bridge. The petitioners stopped both the vehicles and on query the persons of one vehicle having registration No. WB 58L/9949 admitted that they had Rs.2,00,000/- (Rupees Two Lakh) fake Indian currency notes and the driver of the other vehicle being No. WB 58K/8736 admitted that they had Rs. 13,00,000/- (Rupees Thirteen Lakhs). Before the customs officials could know the identity of the persons inside the vehicles a group of persons led by one Assistant Sub-Inspector of Suti Police Station arrived there and interfered with the process of (raid) preliminary enquiry by the petitioners in course of discharge of public duty on the plea that they had information that the vehicles were carrying fire arms. The police personnel forcibly took possession of both the vehicles and took both the vehicles at Suti Police Station after giving assurance to the present petitioners to conduct joint search operation of both the vehicles at the said police station.

The petitioners being the customs officials went to the Suti police station by their official vehicle. They were not allowed to take part in the search of the vehicles. They were not allowed to interrogate the persons who were in the said vehicles and involved in the smuggling of fake Indian currency notes.

The petitioners were taken to a room of the police station and kept them awaiting there. The police personnel informed them that they had recovered some bundles of currency notes. Police personnel of Suti P.S. did not inform them from whom those currency notes were recovered. The petitioners were not allowed to inspect the currency notes and to take part in the alleged search operation. No arms and ammunitions were recovered from the vehicles and the petitioners did not put their signatures on any paper. The petitioners have claimed that at the relevant point of time they were in official uniform and with official vehicle to discharge their public duty on the basis of official order. The petitioners were confined in a room for a long time. The officer-in-charge in Suti Police Station asked the petitioners to sign on a paper. From that paper the petitioners found that complaint was lodged against them. The petitioners refused to put their signatures on the written complaint and they were not served any copy of the said complaint. The police personnel of Suti Police Station allowed those vehicles to go without search and seizure of bulk amount of fake Indian Currency notes. On 19.9.2010 at about 1.00 p.m. the petitioners were informed that they had been arrested while performing the public duty. The petitioners were produced before the learned Additional Chief Judicial Magistrate,

Jangipur. The learned Additional Chief Judicial Magistrate, Jangipur after hearing the petitioners and considering the papers granted bail to the petitioners.

After getting the copy of the complaint of Suti Police Station Case No.585 of 2010 dated 18th September, 2010 under Sections 384/411/34 of the Indian Penal Code the petitioners came to know that one Jahir Ahmed son of late Ashan Ali Mondal of village and P.S. Jalangi made a written complaint at 19.05 hours against the petitioners. The petitioners have stated that the complainant lodged a false complaint against the customs officials who were on duty at the relevant point of time on the basis of the order of their superior authority. The false complaint was lodged to cover up the crime committed by the complainant with the help of police personnel of Suti Police Station.

It is the specific contention of the petitioners that the allegations contained in the said FIR are baseless/false and it was purposely done.

Suti Police Station Case no.585 of 2010 dated 18.09.2010 under Sections 384/311/34 of the Indian Penal Code was started on the basis of the FIR lodged by one Jahir Ahamed son of late Ashan Ali Mondal. It was alleged in the said FIR that on 18.09.2010 the complainant withdrew a sum of Rs.1,25,000/- (Rupees One Lakh Twenty Five thousand) from his A/c No.1630101000-65919, of his Axis Bank Account, Berhampur by cheque no.203466 and also withdrew a sum of Rs.28,800/- (Rupees Twenty Eight Thousand Eight Hundred) by another cheque and also took Rs.50,000/- (Rupees Fifty Thousand) from his house and kept the entire amount of Rs.2,03,800/- in a nylon bag. He was going from Berhampur to hand over the said amount to Sri Arun Kumar Jain, the owner of Sangita Trading Company by his car being registration No.WB-58L-9949 accompanied by Titu Molita, Masood Mollah, Rezaul Dafadar. At about 1 p.m. when their car was crossing the Bridge then one vehicle being registration No. WB 58 F/5278 blocked their car. At the relevant point of time one jeep being No. WB-02F/6416 came behind the vehicle of the de-facto complainant. Eight persons came down from those two vehicles. Out of them two persons forcibly opened the door of the vehicle of the complainant and snatched away the bag of the complainant containing the said amount. It was alleged by the complainant that those persons forcibly snatched away their mobile phones so that they could not talk with others. They were detained in the car for about one hour. Those persons told the complainant that they were the customs officials and they had authority to seize the money and to arrest them. The complainant tried to explain that he collected the money from the bank for the purpose of his business, but those persons did not pay heed on his request. Thereafter another vehicle being No. WB 58K/8736 reached at that place. Those persons also stopped that vehicle and disclosed their identity as the officials of customs. There was an altercation in between the persons of that vehicle and the persons who claimed themselves to be the officials of the customs. At that time one police vehicle came at the spot when the police personnel wanted to know the identity of the persons who stopped the vehicle of the complainant. Those persons described themselves to

be the official of the customs and asked the police officials to leave that place. The police personnel asked those persons who described themselves to be the officials of the customs to show their identity and also the document showing the seizure of the amount from the possession of the de-facto complainant. The officials of the customs could not show the same on the request of the police personnel. They denied the fact of taking money from the complainant. Local people assembled there. Police personnel made search in the vehicle of the customs officials being no.WB-02-F/6416 and recovered bag of the complainant containing money. The customs officials disclosed their identity as Nitai Chandra Das, officer, Shilanand Tigga, Phani Ghosh, Pradyut Kumar Goswami, Susanta Kumar Maity and Haran Sk. Two or three persons fled away. It was specifically alleged by the complainant that those persons being the customs officers trying to grab his money by force.

In the FIR the complainant further stated that he came to know that the officials of the customs regularly took money from the business men by putting them under pressure.

On the basis of the said FIR lodged by the de-facto complainant Suti P.S. Case No.585/2010 dated 18.09.2010 was initiated against the present petitioners for commission of the alleged offences punishable under Sections 384/411/34 of the Indian Penal Code. Investigation of the case culminated in the submission of charge-sheet for commission of alleged offences under Sections 384/411/34 of the Indian Penal Code.

The petitioners filed one writ petition being no. 12135 (W) 2015 challenging the submission of the charge-sheet in connection with Suti Police Station Case No.585/2010 dated 18th September, 2010 corresponding G.R. Case no. 204/2010 on the ground that the Commissioner of Customs had declined to accord sanction for prosecution of the petitioners. The said writ petition was dismissed on the ground that on 16th February, 2015 the petitioner had prayed for discharge before the learned Judicial Magistrate. The said prayer of the petitioners was rejected by the learned Magistrate on 16th February, 2015. The fact of filing the said application and the order of rejection of the prayer of the petitioners had not been disclosed in the writ petition. In the said order passed in connection with the writ petition mentioned above it has been specifically stated that the order passed in connection with the writ petition was not preclude the petitioners to challenge the order dated 16th February, 2015 before the appropriate forum in accordance with law, if so advised.

The copy of the order dated 16th February, 2015 passed by the learned Judicial Magistrate has been filed along with the present application.

Copy of the case diary has been produced by the learned Additional Public Prosecutor.

During the course of hearing the learned senior counsel appearing for the petitioners has contended that the petitioners have been falsely implicated in the

instant case. While making his submission in favour of quashing of the criminal proceedings pending against the petitioners, the learned senior Advocate appearing for the petitioners has submitted that the petitioners at the relevant point of time were in official uniform and were discharging their official duties. They were also using their official vehicle to discharge their duties. The petitioners acted in discharge of their official duties and they were discharging their official duties as per the official orders and the circular dated 10th August, 2010. In support of the contention, the learned senior Counsel appearing for the petitioners has drawn the attention of the court to pages 36 to 41 of the present application and submitted that on the basis of specific intelligence/information regarding smuggling of fake currency notes the petitioners were performing their duties. During the course of hearing Learned Counsel for the petitioners has also invited the attention of the court to correspondence in between the Director General of police of West Bengal, Calcutta and Commissioner of Customs (preventive) West Bengal. Learned Counsel for the petitioners has submitted that from the correspondence made by the Commissioner of Customs (preventive) West Bengal it is clear that the petitioners were on official duties at the relevant point of time and on the basis of secret information they had knowledge that the two vehicles were carrying fake currency notes. It is his contention that the present criminal proceedings were initiated against the petitioners by the complainant with the help of the police personnel to harass the present petitioners. Learned Counsel has invited the attention of the court to relevant provisions of Section 155 of the Customs Act, 1962 and has submitted that the present petitioners being the customs officials and were engaged in official duties. As such they were entitled to get protection under Section 155 of the Customs Act, 1962. According to his contention the officials of the customs were performing their official duties in good faith and as such they were entitled to get protection under the provisions of Section 155 of the Customs Act. He has also invited the attention of the Court to the provisions of Section 167(5) (iii) of the Code of Criminal Procedure and has vigorously argued that the investigation of the instant case was not completed within a period of 2 years from the date on which the accused persons were arrested and no such prayer for extension was made before the Magistrate for continuation of the investigation beyond the said period.

Reliance has been placed by the learned Counsel for the petitioners on the provisions as contained in Section 155 and Section 106 of the Customs Act, 1962. The Learned Counsel for the petitioners has strongly submitted that the petitioners/accused acted within their statutory authority and they were entitled to get protection as provided under Section 155 of the Customs Act. He has further contended that Section 106 of the Customs Act gives the authority to the officers to stop and search any vehicles. It is the specific contention of the Learned Advocate for the petitioners that in the instant case the petitioners acted in discharge of their official duties and as such the sanctioning authority has rightly refused to accord sanction to prosecute the petitioners. In support of this

contention the learned counsel for the petitioners has drawn the attention of the Court to annexure-P/8 at the page 81 and submitted that the Commissioner of Customs (Preventive) West Bengal Kolkata has declined to accord sanction to prosecute the petitioners in a court of law with the FIR lodged against them mainly on the ground that they are entitled to get the protection under Section 155 of the Customs Act. According to the contention of the learned Advocate appearing for the petitioner that the continuance of the present proceedings against the present petitioners would amount to an abuse of the process of the Court and the criminal proceedings pending against them are liable to be quashed.

The learned Additional Public Prosecutor Mr. Rana Mukherjee appearing for the State has contended that in the instant case admittedly the accused/petitioners are public servants as they were the customs officials at the relevant point of time. The materials placed on record revealed that the petitioners were on official duty when the alleged act as complained of took place. He has further submitted that from the documents annexed by the petitioners it would appear that the sanction to prosecute the petitioners was declined by the sanctioning authority.

In support of his contention the learned Counsel for the petitioners has placed reliance on the decisions in *Costao Fernandes Vs. State* at the instance of DSP, CBI, Bombay reported in 1996 Cri. LJ 1723 and in the decision of *Nirmal Kanti Roy Vs. State of West Bengal with Ganesh Lal Moondra & Ors. Vs. S. Dasgupta & Anr.* reported in (1998) 4 SCC 590.

I have carefully considered the submissions made by learned Counsel appearing for the parties. In the instant case the FIR was lodged by one Jahir Ahamed on 18.09.2010 at 19.35 hours with Suti Police Station and on the basis of that FIR Suti Police Station Case No. 583/10 dated 8.9.2010 was initiated against the present petitioners. In the formal FIR it was mentioned that of the accused were the customs officials. The petitioners have approached for quashing of the criminal proceedings started against them by the de-facto complainant Jahir Ahmed. The case diary reveals that the investigation culminated in submission of charge-sheet against the petitioner for commission of the alleged offences punishable under Sections 384/411/34 of the Indian Penal Code. The petitioners in their application for quashing of the proceedings have annexed several documents. Authenticity and genuineness of those documents have not been challenged by the learned Additional Public Prosecutor appearing for the State. From the FIR it appears that the allegations contained in the FIR are that the petitioners blocked the car of the de-facto complainant on the public road and two persons forcibly entered into his car and snatched away his bag containing cash of RS. 2,03,800/-(Rupees Two Lakh Three thousand Eight Hundred) by force. From annexure-P/2 of the application filed by the petitioners it appears that at the relevant point of time the petitioners were on duty. The petitioners were performing the preventive duty at the relevant point of time on Ahiran Bridge on the basis of the secret information regarding smuggling of fake

currency notes (as it appeared from annexure P/2). From annexure-P/8 at page 81 of the application filed by the petitioners it also appears that Mr. Amit Kumar Roy Commissioner of the Customs (Preventive) West Bengal Kolkata wrote a letter to the Superintendent of Police, Murshidabad, West Bengal in connection with Suti Police Station Case No.585/10 dated 18.09.2010 and from that letter it appears that the petitioners were the customs officials at the relevant point of time and they were on duty.

From the said document it further transpires that the petitioners were the superintendent, Jangipur Customs Preventive Unit and accompanied by the staff of Jangipur Customs Preventive Unit. The said letter it also reveals that the area in question was infested with and well known for FICN smuggling and illegal transportation of contraband goods. The materials placed on record as well as from the submissions made by learned Counsel appearing for the parties it appears that the alleged incident took place while the petitioners were discharging their official duties and they were stopped the vehicle of the complainant as alleged in discharge of their official duties. In this connection the relevant provisions of Section 106 of the Customs Act, 1962 may be cited.

Section 106 of the Act runs as under:

Power to stop and search conveyances

(1)"Where the proper officer has reason to believe that any aircraft, vehicle or animal in India or any vessel in India or within the Indian customs waters has been, is being or is about to be used in the smuggling of any goods or in the carriage of any goods which have been smuggled, he may at any time stop any such vehicle, animal or vessel or, in the case of an aircraft, compel it to land, and

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- a. rummage and search any part of the aircraft, vehicle or vessel;
- b. examine and search any goods in the aircraft, vehicle or vessel or on the animal;
- c. break open the lock of any door or package for exercising the powers conferred by clauses (a) and (b), if the keys are withheld.

2.Where for the purposes of sub-section(1)-

- a. it becomes necessary to stop any vessel or compel any aircraft to land, it shall be lawful for any vessel or aircraft in the service of the Government while flying her proper flag and authority authorized in this behalf by the Central Government to summon such vessel to stop or the aircraft to land, by means of an international signal, code or other recognized means, and thereupon such vessel shall forthwith stop or such aircraft shall forthwith land; and if it fails to do so, chase may be given thereto by any vessel or aircraft as aforesaid and if after a gun is fired as a signal the vessel fails to stop or the aircraft fails to land, it may be fired upon;

b. it becomes necessary to stop any vehicle or animal, the proper officer may use all lawful means for stopping it, and where such means fail, the vehicle or animal may be fired upon."

It would not be out of place to mention another section of Customs Act, 1962. Section 155 of the Customs Act reads as under:

"Protection of action taken under the Act

1. No suit, prosecution or other legal proceedings shall lie against the Central Government or any officer of the government or a local authority for anything which is done, or intended to be done in good faith, in pursuance of this act or the rules or regulations.

2. No proceeding other than a suit shall be commenced against the Central Government or any officer of the government or a local authority for anything purporting to be done in pursuance of this Act without giving the Central Government or such officer a month's previous notice in writing of the intended proceeding and of the cause thereof, or after the expiration of three months from the accrual of such cause. "

Previously I have observed that the authenticity of the documents produced by the petitioners in support of their contention to quash the proceedings has not been challenged by the State. As per the FIR alleged incident occurred on 18.09.2010 on public road. It was alleged by the de-facto complainant that the vehicle was stopped by the accused and two of them opened the door of the vehicle of the complainant and snatched away his bag containing Rs.2,03,800/-(Rupees two lakh three thousand eight hundred). The learned Advocate appearing for the petitioners has laid stress on the fact that the alleged act of the petitioners/the accused are connected with the discharge of their official duties. It is settled principle of law that the accused persons are not debarred from producing relevant documents which can be legally looked into without any formal proof, in support of the stand that the acts complained of were committed in exercise of their jurisdiction as public servants in discharge of official duties. If the alleged acts are done or connected in discharge of the official duty then the public servant is entitled to get protection in view of Section 155 of the Customs Act and a public servant can be prosecuted only with the sanction under Section 197 of the Code of Criminal Procedure. In the case at hand it was alleged that the amount was taken away from the possession of the de-facto complainant by the accused persons by using force and that was subsequently recovered from their possession. The copy of the seizure list as prepared by the I.O. on 18.09.2010 mentioned about the seized amount of Rs.2,03,800/-(Rupees Two lakh Three Thousand Eight Hundred)from the possession of the accused persons. According to the seizure list the entire amount was seized from all the accused persons. Interestingly the seizure list does not contain the signatures of the persons from whom the amount was seized. The column 7 of the seizure list was kept blank.

In the instant case from annexure-P/8 annexed to the application filed by the

petitioners it appears that the sanctioning authority declined to accord sanction for prosecution of the present petitioners. The ground to decline sanction was that the petitioners are entitled to get protection under Section 155 of the Customs Act, 1962. From annexure P/8 it further appears that the sanctioning authority applied his mind to the facts of the case and refused to accord sanction. The question of necessity of sanction depends upon the facts and circumstance of each case. There must be a reasonable connection between the alleged acts and discharge of official duties. In the instant case the sanctioning authority, the Commissioner of Customs (preventive) West Bengal declined to accord sanction and opined that the petitioners are the customs officers and they are entitled to get protection under Section 155 of the Customs Act.

The protective umbrella provided to a public servant under Section 197 of the Code of Criminal Procedure does not extend to every act or omission done by the public servant in service but restricts its scope of operation to only those acts or omission which are done by a public servant in discharge of his official duty. A Public servant cannot be prosecuted without sanction if the public servant is alleged to have committed an offence during discharge of his official duty.

From the materials placed on record it appears that the acts of the petitioners/accused persons were alleged to have been committed in discharge of their official duties which they were required to do as per the order issued by Customs Authority to find out fake Indian currency Notes. Mandate engrafted in sub Section (i) of Section 197 of the Code of Criminal Procedure debarring a court from taking cognizance of an offence except with a previous sanction is a prohibition imposed by the statute from taking cognizance. In the present case at hand the Authority refused to grant sanction for prosecution after considering the entire facts and circumstances of the case and relevant provisions of law. In the present case the offence alleged to have been committed by the public servants in discharge of their official duties and sanction to prosecute has been declined by the Appropriate Authority.

In view of the foregoing discussion, I am of the view that the continuance of the Criminal proceedings pending against the petitioners would be an abuse of the process of the Court. Accordingly, the Criminal proceedings being G.R. Case No.2034 of 2010 under Sections 384/411/34 of the Indian Penal Code pending before the learned Additional Chief Judicial Magistrate, Murshidabad, are hereby quashed. As a result, the Revisional Application being CRR 3463 of 2015 is allowed.

Urgent certified photocopy of this judgment and order, if applied for, be supplied to the parties upon compliance with all requisite formalities.