
(2006) 06 CAL CK 0041
In the Calcutta High Court
Case No : C.R.R. No. 887 of 2006

Om Prakash Yadav

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 23-06-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 401, 482
Prevention of Corruption Act, 1988 — Section 7

Citation : (2006) 4 CHN 698

Hon'ble Judges : S.P. Talukdar, J

Bench : Single Bench

Advocate : Y.J. Dastoor and Chanchal Kr. Jain, for the Appellant; Ranjan Roy, for the Respondent

Judgement

S.P. Talukdar, J.—The present application u/s 401 read with Section 482 of the Code of Criminal Procedure is directed against the order dated 13.2.2006 passed by the learned 3rd Court of Additional Sessions Judge at Barasat in Special Case No. 11 of 2003.

2. Mr. Dastoor appearing as learned Counsel for the petitioner submits that the learned Trial Court while passing the said impugned order dated 13.2.2006 did not, in fact, take into consideration the application which was filed before the said learned Court seeking adjournment and praying for direction upon the Ministry of Civil Aviation to submit document which was suppressed while according sanction.

3. Mr. Dastoor while referring to the backdrop of the present case submits that the present petitioner was an officer in the Security Wing of the Ministry of Civil Aviation. He submits that the Chief Commissioner of Security of the Ministry of Civil Aviation in connection with the matter for according sanction for prosecution as against the present petitioner strongly recommended that such sanction should not be granted. But despite that, without taking into consideration the said recommendation of the supreme authority of the concerned department,

sanction was accorded. Mr. Dastoor then submits that the present petitioner by filing an application while seeking adjournment prayed for a direction upon the Ministry of Civil Aviation to submit relevant documents which had been suppressed while according sanction. According to Mr. Dastoor, such significant aspect was not at all taken into consideration by the learned Trial Court while rejecting the prayer for discharge of the petitioner and then going ahead with the framing of charge u/s 7 of the Prevention of Corruption Act.

4. In response to this, Mr. Ranjan Roy appearing as learned Counsel for the opposite party/C.B.I. submits that this is the second attempt on the part of the petitioner to delay the proceeding in question by filing revisional application before this Court. According to Mr. Roy, it is not for the learned Trial Court at the stage of consideration of charge to assess the legality or validity of the sanction order. Mr. Roy submits that the concerned authority duly accorded sanction for prosecution against the present petitioner and as such, there could be no reason for the learned Court for not going ahead with the trial of the case. Mr. Roy referring to the decision in the case of *Indu Bhusan Chatterjee Vs. The State of West Bengal*, submits that the papers placed before the concerned authority apparently gave the necessary materials upon which decision was taken for according sanction. Mr. Roy submits that nothing more is required. He also relied upon the decision in the case of *Shankerbhai Laljibhai Rot v. State of Gujarat* reported in 2006 (1) SCC 346 in support of his contention that in absence of anything to show that any defect or irregularity in sanction caused failure of justice, plea relating to sanction is without substance. In this context, he further relied upon the decision in the case of *State by Police Inspector v. T. Venkatesh Murthy* reported in 2004 SCC 2140. It is the emphatic assertion By Mr. Roy, learned Counsel for the C.B.I. that merely because there is any omission, error or irregularity in the matter of according sanction, it cannot affect the validity of the proceeding unless the Court records the satisfaction that such error, omission or irregularity has resulted in failure of justice.

5. It appears from the impugned order dated 13.2.2006 that the learned Trial Court took note of the petition filed on behalf of the petitioner seeking direction upon the Ministry of Civil Aviation for production of certain documents. Thus, Mr. Dastoor's first grievance that such application, in fact, escaped the attention of the learned Court does not seem to have been any sound rational basis. The question is whether sanction was accorded or not. It cannot be denied that sanction was obtained by the prosecuting machinery being the C.B.I. before submitting chargesheet in the present case. Learned Trial Court, in this context, was quite justified in holding that the legality of the sanction order cannot be decided at the stage of consideration of charge. It is certainly open for the petitioner/accused person to raise grievance in this regard. Assuming the apprehension of Mr. Dastoor that the recommendation of the supreme authority of the Security Wing of the Ministry of Civil Aviation was not taken into consideration by the concerned authority at the time of according sanction, it cannot be denied that this is an issue which cannot be decided by the learned

Trial Court and that too, at the stage of consideration of charge.

6. The reference to the fact that even irregular or illegal sanction order does not necessarily vitiate the proceeding in absence of clear finding that it will result in failure of justice, this Court is of the opinion that this is not the right stage for this Court to deal with the same. Having regard to the scope of the present revisional application, we fail to find any illegality and impropriety in the order impugned being the order dated 13.2.2006. The said order reflects that learned Court duly applied its mind to the defence prayer for direction upon the concerned authority to produce documents. It further reflects that the learned Court refused to deal with the legality of the sanction order and for this, I do not find any scope for grievance right at this stage. It is clear from the materials available before the learned Court that the C.B.I. obtained sanction and learned Court on the basis of the same framed charge u/s 7 of the Prevention of Corruption Act and decided to proceed with evidence.

7. In my considered opinion, the order under challenge does not suffer from any illegality which justifies any interference by this Court right at this stage. It is, however, open to the petitioner to raise grievance regarding the legality or validity of the sanction order before the learned Trial Court at the appropriate stage and it is also for the defence to take necessary steps for production of relevant document which the defence may feel necessary so as to establish his claim that the sanction order was not legal and valid.

8. With such observation, the present application being CRR No. 887 of 2006 stands disposed of.

9. Send a copy of the order to the learned Court below for information and necessary action and criminal section is directed to supply certified copy of this order, if applied for, to the learned Counsel for the parties, expeditiously.