

(2002) 02 CAL CK 0025

In the Calcutta High Court

Case No : Writ Petition No. 18818 (W) of 2001

Prodyot Kumar Chatterjee and Others

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 11-02-2002

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 154, 156(3)
Penal Code, 1860 (IPC) — Section 120B, 406, 409, 420, 468

Citation : (2002) 3 CALLT 291

Hon'ble Judges : Pratap Kumar Ray, J

Bench : Single Bench

Advocate : Subrata Das and Ananya Das, for the Appellant; Milon Kr. Bhattacharya and Chhabi Roy for the State (Respondent Nos. 1, 2 and 3), Rupen Mitra and A Rao for the Respondent No. 4, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Ray, J.—Heard the learned advocates for the parties.

2. In this writ application the petitioners have prayed for following reliefs:-

(a) A writ and/or in the nature of mandamus directing and commanding the respondents and/or each of them, their servants, agents, subordinates and associates thereby restraining them from causing any investigation in pursuance of the purported FIR No. 138 dated 25th July, 2001 lodged by the respondent No. 4.

(b) A writ of and/or in the nature of mandamus directing and commanding the respondent and/or each of them their servants, agents, sub-ordinates and associates to refrain from causing any harassment or arrest of the petitioners or the family members of the petitioner No. 1 without obtaining leave of this Hon'ble Court.

(c) A writ of and/or in nature of Certiorari directing and/or commanding the

respondents and/or each of them, their agents, servants, subordinates and associates to transmit all the records relating to this case after certifying the same so that conscionable justice may be administered thereof.

3. From the documents it appears that one Navneet Beheti respondent No. 4 herein filed application u/s 156(3) of the Code of Criminal Procedure, 1973 before the Court of learned Chief Judicial Magistrate at Alipore which was registered as case No. C. 1560 of 2001 wherein it was alleged that the Directors of the Bank of Rajasthan Limited in connivance with some companies whose names are mentioned in paragraph 3 of such complaint were diverting funds of the Bank for personal benefits of themselves upon forging some documents and papers. The learned Chief Judicial Magistrate at Alipore upon being satisfied with the contentions as made in that application praying for initiation of a criminal proceeding upon treating the application as FIR for commission of the offence by accused person under Sections 406, 409, 120B, 420, 467, 468, 471 and 477A of the Indian Penal Code, had referred the matter to concerned Police Station for treating the same as FIR in pursuance of the statutory provision as laid down u/s 156(3) of the Code of Criminal Procedure, 1973. In pursuance thereof Alipore Police Station case No. 138 dated 25th July, 2001 under Sections 406, 409, 120B, 420, 467, 468, 471 and 477A of the Indian Penal Code was started. The name of the present writ petitioners in this writ application also appeared in paragraph 3 of such complaint which was directed to be treated as First Information Report u/s 156(3) of the said Criminal Procedure Code. In paragraph 3, the names of many companies were mentioned including the writ petitioners. In pursuance of such, the Police started to investigate the matter. It is alleged by the petitioners herein that they are being harassed by the Police Authority and accordingly prayed for aforesaid reliefs namely, order of restraint from causing any investigation in pursuance of the said Alipore Police Station case No. 138 dated 25th July, 2001 as well as necessary order restraining the Police Authority from causing any arrest to the petitioners or other family members in pursuance of such investigation. From the documents as annexed, it appears that another writ application was moved being registered as A.S.T. No. 1403 of 2001 challenging the order of the learned Chief Judicial Magistrate, Alipore directing that the petition of complaint would be treated as FIR u/s 156(3) of the Code of Criminal Procedure. In that writ application it was contended that the order was bad in law since there could not be two FIRs and /or two investigations on identical facts and situation. It was alleged in the said application that already in the State of Rajasthan a criminal proceeding has been initiated and the Rajasthan High Court directed the investigation by CBI Authority whereas herein the learned Chief Judicial Magistrate, Alipore directed the Police Authority to treat the complaint as FIR and now the Police Authority herein are investigating the matter. On that score it was argued in earlier writ application filed by the other co-accused that the same would be travesty of justice since two parallel investigations were allowed to continue. The learned single Judge of this Court, however, passed an order touching the investigation of the Alipore Police Station

case No. 138 dated 25th July 2001 resulting and appeal preferred by the Bank of Rajasthan in F.M.A.T No. 3487 of 2001. In this appeal with reference to interlocutory application for modification of the order, the Division Bench heard the matter in length and did not interfere with the investigation as was going on with reference to the aforesaid Alipore Police Station case No. 138 dated 25th July, 2001 arose out of the complaint u/s 200 of the Code of Criminal Procedure, 1973 which was registered as complaint case No. C. 1560/ 2001 whereby direction was given to treat the said complaint as FIR by the said Alipore Police Station. Since with reference to the complaint u/s 200 of the Code of Criminal Procedure the present petitioner's names appeared in paragraphs 3 of the said complaint contending, inter alia, that these petitioners in connivance with the Board of Directors of Bank of Rajasthan who are mentioned as main accused, were diverting the funds of the Bank for their own purposes. The Police Authority accordingly in course of the investigation wanted the presence of the petitioners for the purpose of investigation. In view of the Division Bench order whereby the Police Authorities have been directed to continue the investigation, the present petitioners who have been named as parties in paragraph 3 on allegation of connivance, with the Directors of the bank in the matter of diversion of the fund, necessarily are bound by the Division Bench order. Furthermore, since the present petitioners names are already mentioned in the FIR and the matter is in investigation stage, in view of the settled law of the Apex Court fixing the parameter of interference for exercising the power of judicial review of the High Court sitting in the writ jurisdiction as stated in the case of State of Kerala and Others Vs. O.C. Kuttan and Others, relying upon the earlier Judgment of the Apex Court passed in State of West Bengal and Others Vs. Swapan Kumar Guha and Others, , R.S. Raghunath Vs. State of Karnataka and another, , State of U.P. Vs. O.P. Sharma, and Rashmi Kumar (Smt) Vs. Mahesh Kumar Bhada, . this Court is not inclined to interfere with such investigation. It appears from the FIR itself that prima facie the present petitioners' names have been mentioned upon alleging, inter alia, that these petitioners in connivance with the Director of the Bank of Rajasthan diverted the funds of the Bank. Hence, on bare perusal of the FIR it cannot be said that there is no allegation against the petitioners. Furthermore, it cannot be said that there was no case made out in the FIR, where investigation of the case would be nipped in the bud, while the matter is in investigation stage. Hence, considering the parameter as set up by the Apex Court's judgments as stated above, this Court is not considering this as a fit case to interfere with. However, the learned advocate for the petitioners urged that there are two parallel investigations, namely, on by the CBI relating to a complaint filed in the State of Rajasthan and another herein in Calcutta with reference to the complaint filed by the respondent No. 4 herein. On that fact, it is contended that the petitioners would be prejudiced and under the law two investigations with reference to the selfsame factual matters are not allowed to be made. Reliance has been placed to the judgment of the Apex Court in T.T. Antony Vs. State of Kerala and Others, . Since already there is an order of Division Bench of this Court as referred to directing the investigation in

pursuance of the aforesaid Alipore Police Station case No. 138 dated 25th July, 2001 this Court sitting singly cannot interfere with such investigation as the same would be nothing but interference with the order of the Division Bench of this Court whereby investigation was allowed to be continued. In that view of the matter the legal proposition as submitted about the two FIRs, which are still pending for adjudication in another writ application, this Court sitting in the co-ordinate Bench is not inclined to interfere with such investigation. However, the petitioners are at liberty to be added as party in the another writ application wherein self-same FIR is under challenge. This view is taken in view of the settled judgment that two parallel proceeding cannot be continued. It is an admitted fact that another writ application is pending in the High Court at Calcutta on the self-same fact and same-self point of law as involved herein. Hence, entertain of this application is bar under a public policy, only to avoid divergent findings of the Courts of concurrent jurisdiction. Reliance may be placed to the judgment of the Apex Court passed in the case Agricultural and Processed Food Products v. Oswal Agro Furane and Ors., reported in (1996) 4 SCC 197 and more precisely paragraph 29 of the said judgment wherein the Apex Court held that parallel proceeding on identical facts and question of law is nothing but abuse of the process of law. In that view of the matter, this writ application stands dismissed but no Order as to costs.

Let xerox certified copy of this Order, if applied for, be given to the learned advocates on behalf of the parties expeditiously.