(2019) 03 CAL CK 0029

In the Calcutta High Court

Case No : Criminal Revision (CRR) No. 116 Of 2016

Rajeeb Kothari APPELLANT

Vs

State Of West Bengal & Anr. RESPONDENT

Date of Decision : 06-03-2019

Acts Referred:

Indian Penal Code, 1860 — Section 120B, 409, 420
Code Of Criminal Procedure, 1973 — Section 2(o), 2(s), 36, 156(1), 156(3)
Negotiable Instruments Act, 1881 — Section 138
Constitution Of India, 1950 — Article 21

Citation : (2019) 03 CAL CK 0029

Hon'ble Judges : Shivakant Prasad, J

Bench : Single Bench

Advocate : Kaushik Chatterjee, Tirthankar Dey, Abhra Mukherjee, Debjani Sahu

Final Decision : Dismissed

Judgement

In this revisional application the accused/petitioner has prayed for quashing of the proceeding in G.R. Case No. 2580 of 1996 pending before the learned 5th Metropolitan Magistrate, Calcutta under Sections 420/409/120B IPC.

An FIR being Hare Street Police Case No. 495 dated October 11, 1996 was started on the basis of the direction given to the DCDD (1) to cause investigation under the provisions of Section 156(3) CrPC by the learned Chief Metropolitan Magistrate, Calcutta on September 26, 1996.

After the investigation the Investigating Officer submitted charge-sheet finding a prima facie case of offence under Sections 120B/420 IPC against the three accused persons namely Rajendra Singh Kothari, since deceased, Sanjoy Kothari and Rajeev Kothari.

The order sheet will reveal that warrant of arrest is pending against CS accused no. 2 and despite tagid, warrant has not yet been executed for a considerable period of time. So, obviously the reason is well understood from the order sheet itself that it is because of the accused no. 2 absconding and avoiding to face the trial, the delay has been caused. However, the accused no. 1 Rajendra Singh Kothari(since deceased) had surrendered on September 12, 2002 and was admitted on bail and accused no. 3 Rajeev Kothari, son of late Rajendra Singh Kothari was also admitted on bail.

The brief facts of the prosecution case is that the accused persons including the petitioner being 1) M.R.M.B & Sons, 2) S.R. Investment and 3) Commercial Trading Co. had entered into a criminal conspiracy with each other and thereby false representation depicted as rosy picture to the complainant for doing shares business with them and induced the complainant to part with share certificates of different companies to the tune of Rs. 3,37,905.00/ and on being so entrusted they committed criminal breach of trust and cheated the complainant in respect of said amount and they issued three different cheques on different dates of UBI Garpar Branch which cheques were dishonoured by the banker.

The charge-sheet after investigation submitted reflects that the petitioners had received almost all the bills against the shares on different dates from the complainant after signing his signatures and prima facie it reveals that the accused persons had purchased the shares from the complainant in different times and issued the purchase bills as well as cheques issued to the complainant which were dishonoured and as such there appears prima facie a tendency for cheating the complainant. It is also reflected from the report as submitted by the Officer-in-Charge, Anti Fraud Section, Detective Department, Kolkata dated June 21, 2018 that the defacto complainant Debasish Roy died in a road traffic accident at Nandni (N.H) in Jammu & Kashmir.

The grounds taken on behalf of the petitioner is that the case is pending for over eighteen years which caused serious prejudice to the petitioner to fair trial and speedy justice and allowing the proceeding to continue is violation of Article 21 of the Constitution of India. This ground cannot be maintained in view of the fact that order sheet reveals that for years together the warrant of arrest is pending against the accused no. 2, Sanjay Kothari.

The petitioner has every knowledge of his whereabouts and if he had honest intention he could enter appearance and obtain bail by now and could have faced trial but this revisional application filed only after the issuance of the warrant of arrest against the accused no. 2.

Second fold ground is that a specific case was registered under Section 156(3) CrPC given direction to the DCDD(1) to cause investigation who is not an Officer-in-Charge within the meaning of Section 156(3) CrPC for the purpose of direction for investigation.

To fortify the argument learned counsel for the petitioner refers to a decision in the case of Central Bureau of Investigation through S.P., Jaipur v. State of Rajasthan & Anr., reported in 2001(1) Supreme 263 wherein it has been held that what is contained in sub-section (3) of Section 156, is the power to order the investigation referred to in sub-section (1), because the words " order such an investigation as above-mentioned" in sub-section (3) are unmistakably clear as referring to the other sub-section. Thus the power is to order an "officer in charge of a police station" to conduct investigation.

The two expressions " police station" and "officer in charge of a police station" have been given separate definitions in the Code. Section 2(o) of the Code defines " officer in charge of a police station " as under :

" Officer in charge of a police station" includes, when the officer in charge of the police station is absent from the station-house who is next in rank to such officer and is above the rank of constable or, when the State Government so directs, any other police officer so present."

Section 2(s) defines a " police station" as under:-

" Police station means any post or place declared generally or specially by the State Government, to be a police station, and includes any local area specified by the State Government in this behalf."

It is observed in the cited decision that a place or post declared by the Government as police station, must have a police officer in charge of it and if he, for any reason, is absent in the station-house, the officer who is in next junior rank present in the police station, shall perform the function as officer in charge of that police station. The primary responsibility for conducting investigation into offences in cognizable cases vests with such police officer. Section 156(3) of the Code empowers a magistrate to direct such officer in charge of the police station to investigate any cognizable case over which such magistrate has jurisdiction.

In this context a reference has to be made to Section 36 of the Code which says that police officers superior in rank to an officer in charge of a police station may exercise the same powers, throughout the local area to which they are appointed, as may be exercised by such officer within the limit of his station.

This means any other police officer, who is superior in rank to an officer in charge of a police station, can exercise the same powers of the officer in charge of a police station and when he so exercises the power he would do it in his capacity as officer in charge of the police station. But when a magistrate orders investigation under Section 156(3), he can only direct an officer in charge of a police station to conduct such investigation and not a superior police officer, though such officer can exercise such powers by virtue of Section 36 of the Code. Nonetheless when such an order is passed, any police officer, superior in rank of such officer, can as well exercise the power to conduct investigation, and all such investigations would then be deemed to be the investigation conducted by the officer in charge of a police station. Section 36 of the Code is not meant to substitute the magisterial power envisaged in Section 156(3) of the Code, though it could supplement the powers of an officer in charge of a police station. It is permissible for any superior officer of police to take over the investigation from such officer in charge of the police station either suo motu or on the direction of the superior officer or even that of the Government.

So, obviously the direction which may be given to the CBI may not be considered legal for the direction for investigation under Section 156(3) of the Code because if in the cited decision the learned Magistrate had directed the CBI to conduct investigation but that direction was stayed by the Hon'ble High Court instead permitted the complainant of the case to move the learned Magistrate again for appropriate order for investigation of the offences and pursuant thereto direction was given by the learned Magistrate concerned to the Officer-in-Charge of Hari Nagar Police Station, New Delhi, and on the strength of the said direction FIR No. 32/99 was registered.

In the context of the observation of Hon'ble Apex Court it cannot be said that direction in the instant case given for investigation to the DCDD(1) being the superior officer of the police could not have been ordered by the learned Chief Metropolitan Magistrate in exercise of power under Section 156(3) of the Code to do so. Therefore, I am unable to accept the contentions of learned counsel for the petitioner that the investigation at the threshold is bad in law.

Learned counsel for the petitioner refers to a decision in the case of G. Sagar Suri & Anr. v. State of U.P. & Ors.; reported in (2000) 2 SCC 636 to the observation made in paragraph 14 of the decision to argue that the whole attempt of the complainant is evidently to rope in all the members of the family particularly those who are the parents of the Managing Director of the company in the criminal case without regard to their role or participation in the alleged offences with the sole purpose of getting the loan due to the Finance Company by browbeating and tyrannising the appellants with criminal prosecution.

In the cited case it has been further observed that a criminal complaint under Section 138 of the NI Act was pending against the appellants and other accused. They would suffer the consequences if offence under Section 138 is proved against them. In any case there is no occasion for the complainant to prosecute the appellants under Sections 406/420 IPC and in his doing so it is clearly an abuse of the process of law and prosecution against the appellants for those offences liable to be quashed.

In my respectful consideration the cited decision is not well nigh with the facts and circumstances of the instant case.

Learned counsel for the State submits that, prima facie, the charge-sheet is against the petitioner and the accused persons who are responsible for delay in trial of the case for years together and the case is not one for quashing at this stage.

I have already made it clear in my foregoing paragraphs that the petitioner has preferred this revisional application at a belated stage in 2016 to quash the FIR registered on the basis of a complaint under Section 156(3) of the Code which was allowed for investigation in the year 1996. I once again reiterate that delay is only because of the execution of the warrant of arrest pending against one accused.

Therefore, I am not inclined to quash the FIR and the charge sheet submitted thereupon after investigation.

Thus, the revisional application being CRR 116 of 2016 is dismissed. However, I direct the learned Magistrate concerned to undertake all endeavours to get the matter disposed of by trial of the case even if required by splitting the case in respect of the petitioner.

A copy of this order be sent down to the learned Court below forthwith.

Let a xerox copy of this order, if applied for, be given to the parties after completion of all legal formalities.

