
(2015) 06 CAL CK 0009
In the Calcutta High Court
Case No : C.R.R. No. 433 of 2015

Rathin Pal

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 02-06-2015

Acts Referred:

Constitution of India, 1950 — Article 227
Criminal Procedure Code, 1973 (CrPC) — Section 161, 216, 216(1), 482
Penal Code, 1860 (IPC) — Section 120B, 201, 302, 376, 506

Citation : (2015) 06 CAL CK 0009

Hon'ble Judges : Shib Sadhan Sadhu, J

Bench : Single Bench

Advocate : Deep Chaim Kabir, Debasish Mukhopadhyay and Anirban Banerjee, for the Appellant; Manjit Singh and Amarta Ghose, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Shib Sadhan Sadhu, J.—The petitioner by means of the present petition under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as Cr.P.C. for the sake of brevity) read with Article 227 of the Constitution of India seeks to quash the proceedings of S.C. Case No. 148 of 2014 (S.T. Case No. 02(1)15) under Sections 302/201/376/506/120B of the Indian Penal Code pending before the Court of Learned Additional Sessions Judge, First Court, Serampore, Hooghly including the orders dated 05.01.2014 and 31.03.2015.

2. FIR was lodged by the informant Smt. Uma Dutta wife of Arun Kumar Dutta of D-2nd Floor, R.G. Apartment, 22 R.G. Nagar Road, Hindmotor, P.S. Uttarpara, Hooghly against one named accused Bacchu Ghose to the effect that on 04.07.2014 the said Bacchu Ghose raped her daughter Moumita Dutta aged about 26 years and murdered her. It has been further alleged that the present petitioner deleted the call lists from their cell-phone and threatened the complainant not to lodge any complaint before the police. After investigation charge-sheet was submitted against the said Bacchu Ghose and the present

petitioner. Thereafter on 05.01.2015 charge was framed against this petitioner under Section 201/120B/506 of the IPC. Thereafter the case was fixed for taking evidence. After the examination of two witnesses namely the de facto complainant Uma Dutta and her husband Arun Kumar Dutta as P.W.1 and P.W.2 respectively the Learned P.P.-in-Charge filed an application under Section 216(1) of Cr.P.C. for alteration of the charge against the present petitioner and the same was allowed on hearing both the sides permitting the prosecution to add Section 120B read with Sections 376/302/201 of the IPC against the petitioner.

3. Mr. Deep Chaim Kabir, Learned Advocate appearing for the petitioner argued that the facts, stated in the FIR and statements recorded under Section 161 Cr.P.C. even after accepted as it is, do not constitute any offence of rape or murder against the present petitioner. The only allegation against the petitioner is that he had threatened the de-facto complainant and her family members not to lodge a complaint and that he had deleted the call lists from their mobile phone. It has also been sought to be established by the Investigating Agency that the petitioner pressurized the de facto complainant and her husband to give out a false story that the victim suffered from a heart attack and/or fell from the roof of her house and that he was present in the nursing home and he tried to ensure that no postmortem would be held over the dead body of the deceased. Further it has been attempted to bring on record that some witnesses were threatened not to divulge anything against the petitioner. The Learned Advocate further submitted that a case has been registered and the postmortem examination on the dead body of the deceased was also conducted. Therefore according to him, no ingredient of any offence far to speak of the offence of criminal conspiracy, rape or murder is made out against the present petitioner. He submitted yet further that although two witnesses namely de-facto complainant and her husband were examined as P.W.1 and P.W.2 respectively but from their evidence no material regarding involving of the petitioner in the alleged offence as charged has transpired. Thus the institution of the criminal proceeding or its continuation against the present petitioner is a sheer abuse of process of law and thus the impugned proceeding is liable to be quashed.

4. Mr. Manjit Singh, Learned Public Prosecutor, on the other hand argued that from the contents of the FIR and the case diary statements and also from the depositions of the witnesses already examined, specially from those of P.W.1 and P.W.2 who are the de facto complainant and her husband respectively, a prima facie case of conspiracy for commission of the alleged crime of rape and murder of the victim girl is made out also against the present petitioner. Therefore, no interference is warranted and the petitioner would be at liberty to raise defences available to him under the law in the Trial Court. His defence cannot be considered at this stage. He further contended that although while considering the application for quashing of the charge-sheet, the allegations made in the First Information Report and the materials collected during the course of investigation are required to be considered but truthfulness or otherwise of the allegation is not fit to be gone into at this stage as it is always a matter of Trial

Court.

5. I have considered the rival contention advanced by the Learned Advocates for the parties and perused the entire materials available on record. I have also gone through the case diary and the depositions of P.W.1 and 2 carefully.

6. At the very outset let me refer to two recent decisions of the Hon''ble Supreme Court laying down certain principles in respect of exercise of jurisdiction under Section 482 of Cr.P.C.

7. In Amit Kapoor Vs. Ramesh Chander and Another, (2012) 4 JCC 2885 : (2012) 9 JT 329 : (2012) 9 JT 312 : (2012) 9 SCALE 58 : (2012) 9 SCC 460 , the Hon''ble Supreme Court has laid down that the Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere. Where the factual foundation for an offence has been laid down, the courts should be reluctant and should not hasten to quash the proceedings even on the premise that one or two ingredients have not been stated or do not appear to be satisfied if there is substantial compliance with the requirements of the offence. The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge. Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave errors that might be committed by the Sub-ordinate Courts even in such cases, the High Court should be loath to interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers. Another very significant caution that the Courts have to observe is that it cannot examine the facts, evidence and materials on record to determine where there is sufficient material on the basis of which the case would end in a conviction; the Court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of Court leading to injustice. If the records disclose commission of a criminal offence and the ingredients of the offence are satisfied, then such criminal proceedings would not be quashed merely because a civil wrong has also been committed. The power cannot be invoked to stifle or scuttle a legitimate prosecution. The factual foundation and ingredients of an offence being satisfied, the Court will not either dismiss a complaint or quash such proceedings in exercise of its original jurisdiction.

8. In Rajiv Thapar and Others Vs. Madan Lal Kapoor, (2013) 2 AD 69 : (2013) CriLJ 1272 : (2013) 1 Crimes 169 : (2014) 1 DMC 644 : (2013) 2 JT 209 : (2013) 1 RCR(Criminal) 911 : (2013) 1 SCALE 665 : (2013) 3 SCC 330 : (2013) AIRSCW 784 : (2013) 1 Supreme 435 , The Hon''ble Supreme Court has been pleased to observe that:--

"The High Court, in exercise of its jurisdiction under Section 482 of the Cr.P.C., must make a just and rightful choice. This is not a stage of evaluating the truthfulness or otherwise of allegations levelled by the prosecution/complainant against the accused. Likewise, it is not a stage for determining how weighty the defences raised on behalf of the accused is. Even if the accused is successful in showing some suspicion or doubt, in the allegations levelled by the prosecution/complainant, it would be impermissible to discharge the accused before trial. This is so, because it would result in giving finality to the accusations levelled by the prosecution/complainant, without allowing the prosecution or the complainant to adduce evidence to substantiate the same. The converse is, however, not true, because even if trial is proceeded with, the accused is not subjected to any irreparable consequences. The accused would still be in a position to succeed, by establishing his defences by producing evidence in accordance with law. There is an endless list of judgments rendered by this Court declaring the legal position, that in a case where the prosecution/complainant has levelled allegations bringing out all ingredients of the charge(s) levelled, and have placed material before the Court, prima facie evidencing the truthfulness of the allegations levelled, trial must be held."

9. Let me now examine the contentions raised by the Learned Counsel for the parties in the light of principles enumerated in the aforesaid decisions, in order to find out whether a case of quashing criminal proceedings constituted upon FIR is made out so as to warrant interference by this Court invoking inherent power under Section 482 of the Code.

10. The entire allegations against the petitioner as stated in the written complaint and the case diary statements and also in the depositions of P.W.1 and P.W.2 revealed that on being advised by the accused Bacchu Ghose, the present petitioner was called and he came and asked the police not to lodge any FIR; that he deleted the call lists of P.W.2's mobile phone after making a few calls from P.W.2's phone; that accused Bacchu Ghose went to the house of the petitioner riding the motorcycle of P.W.2 and thereafter they returned to the nursing home and the petitioner told someone to manage the matter relating to the flat and that he would manage the affairs of the nursing home and that nobody should make any complaint before the police and that there shall not be any police case nor there would be any postmortem; that he threatened the de facto complainant and her husband of dire consequences had they dared to lodge complaint before the police and that he threatened to murder some of the witnesses if they would disclose anything against the petitioner before the police. Therefore, it is evident that there are sufficient materials which established prima facie commission of an offence by the petitioner.

11. In this context I would like to quote the observation made by the Hon'ble Supreme Court in the case of C.B.I. Vs. Karimullah Osan Khan, AIR 2014 SC 2234 : (2014) AIRSCW 1702 : (2014) CriLJ 1870 : (2014) 7 JT 259 : (2014) 2 RCR(Criminal) 123 : (2014) 3 SCALE 335 which is as follows:--

"Section 216 of the Cr.P.C. gives considerable powers to the Trial Court, that is, even after the completion of the evidence, arguments heard and the judgment reserved, it can alter and add any charge, subject to the conditions mentioned therein. The expressions "at any time" and before the "judgment is pronounced" would indicate that the power is very wide and can be exercised, in appropriate cases, in the interest of justice, but at the same time, the Courts should also see that its order would not cause any prejudice to the accused. Section 216 Cr.P.C. confers jurisdiction on all Courts, including the designated Courts, to alter or add to any charge framed earlier, at any time before the judgment is pronounced and sub-sections (2) to (5) prescribe the procedure which has to be followed after that addition or alteration. The Courts can exercise the power of addition or modification of charges under Section 216 Cr.P.C., only when there exists some material before the Court, which has some connection or link with the charges sought to be amended, added or modified. In other words, alteration or addition of a charge must be for an offence made out by the evidence recorded during the course of trial before the Court. Merely because the charges are altered after conclusion of the trial, that itself will not lead to the conclusion that it has resulted in prejudice to the accused because sufficient safeguards have been built in Section 216 Cr.P.C. and other related provisions."

12. It is needless to mention that the defence taken by the petitioner relates to disputed facts truthfulness of which cannot be determined at this stage and it is for him to establish such defence by leading cogent evidence at the time of trial.

13. It is settled law that the factual controversy need not be gone into by this Court in exercise of its inherent jurisdiction under Section 482 of the Cr.P.C. Since the foundation of criminal offence is laid against the accused/petitioner for the offence complained of against him under the Indian Penal Code, therefore, this Court is of the opinion that, prima facie, offence under the Indian Penal Code is made out against the petitioner.

14. Inherent jurisdiction under Section 482 of Cr.P.C. has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself.

15. For the reasons aforesaid, the instant Revisional Application stands dismissed. No order as to costs.

16. Criminal Section is directed to deliver urgent photostat certified copy of this judgment to the parties, if applied for, as early as possible.