
(2009) 09 CAL CK 0020
In the Calcutta High Court
Case No : C.R.R. No. 2147 of 2009

Sarada Cereals Pvt. Ltd. and Others APPELLANT
Vs
The State of West Bengal and Another RESPONDENT

Date of Decision : 02-09-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 200, 202, 202(1)
Penal Code, 1860 (IPC) — Section 120B, 185, 403, 406, 420

Citation : (2009) 09 CAL CK 0020

Hon'ble Judges : Ashim Kumar Roy, J

Bench : Single Bench

Advocate : Sekhar Basu, Rajdeep Majumder, Abhijit Sarkar and Subhendu Singha Roy, for the Appellant; Kashem Ali Ahmed, Sudipto Moitra, Tarique Quasimuddin, Sanchita Choudhury and Zainab Tahir for O.P. No. 2, for the Respondent

Final Decision : Dismissed

Judgement

Ashim Kumar Roy, J.—A complaint being laid before the Learned Chief Metropolitan Magistrate, Calcutta by the opposite party No. 2 represented by its Director Ram Prakash Behani alleging commission of offences punishable under Sections 185/403/406/420/477/120B of the Indian Penal Code, the learned Magistrate took cognizance of the said offences and transfer the case to the file of the Learned Metropolitan Magistrate, 16th Court, Calcutta for disposal. The Learned Metropolitan Magistrate, 16th Court, Calcutta upon receipt of the case records on transfer examined the complainant u/s 200 of the Code of Criminal Procedure and recorded his initial deposition. Thereafter, the Learned Magistrate postponed the issue of process and in exercise of power u/s 202(1) directed the Officer-in-Charge, Bowbazar Police Station to investigate into the matter.

The petitioners, who have been arraigned as accused in the aforesaid complaint have now moved this Court for quashing of the said complaint.

2. Mr. Sekhar Basu, the Learned Counsel appearing on behalf of the petitioners

urge before this Court on the face of the allegations made in the aforesaid complaint no case for commission of the alleged offence has been made out and as such the impugned complaint is liable to be quashed. He also urge for quashing of the complaint on the following grounds:

(a) When a Court after taking cognizance of an offence transfer the case to some other subordinate court the transferee court has no jurisdiction to make an order u/s 202 of the Code and in such circumstances the transferee Magistrate is only authorized either to hold enquiry or trial and nothing more.

(b) The power u/s 202 is only vested with the Court which took cognizance.

(c) When the learned Chief Metropolitan Magistrate rejected the prayer of the complainant for referring his complaint to the police u/s 156(3) of the Code the order of investigation in exercise of power u/s 202 of the Code of Criminal Procedure is wholly illegal and without jurisdiction.

(d) When the transferee court after recording of the initial deposition of the complainant and examining the document filed by him in support of his allegations find investigation is necessary in the matter he ought to have dismissed the said complaint as there was no sufficient grounds for proceeding against the accused on the materials placed before him. Lastly, Mr. Basu submitted pursuant to the order passed by the transferee court the police has undertaken investigation and regularly issuing notice to the petitioners asking them to report to the Investigating Officer and to produce various documents and to furnish certain information. Mr. Basu then submitted such action of the police is not authorized by the law and no citizen can be subjected to rigor of investigation until a prima facie case of commission of cognizable offences is made out against him.

On the other hand, Mr. Sudipto Moitra, the learned advocate appearing on behalf of the opposite party No. 2, the complainant vehemently challenged the contention of Mr. Basu. It has been strenuously urged by Mr. Moitra that uptill now no summons have been issued against the petitioners and they have not been transposed in the category of accused as such they have no locus standi to challenge an order passed by the Learned Magistrate u/s 202 of the Code of Criminal Procedure. Besides that it has been further urged by Mr. Moitra that the order impugned does not suffers from any illegality and infirmity and the Learned transferee Court is well within its jurisdiction to make such an order. He further submitted according to the provisions of law it is also open to the police to take all steps necessary for the purpose of investigation.

In support of his contention Mr. Moitra relied on following decisions, viz., (i) *Vadilal Panchal v. Dattatraya Dulaji Ghadigaonkar and Anr.* reported in 1960 Cri. L.J. 1499, (ii) *Dhanalakshmi v. R. Prasanna Kumar and Ors.* reported in 1991 SCC (Cri) 142, (iii) *Sashi Jena and Ors. v. Khadal Swain and Anr.* reported in 2004 SCC (Cri) 1077, (iv) *Dr. S.S. Khanna v. Chief Secretary, Patna and Anr.* reported in 1983 SCC (Cri) 562, (v) *Bhagat Ram Vs. Surinder Kumar and Others,*

(vi) Smt. Nagawwa v. Veeranna Shivalingappa Konjalgi and Ors. reported in 1976 SCC (Cri) 507, (vii) Chandra Deo Singh Vs. Prokash Chandra Bose and Another, (viii) Prabha Mathur and Another Vs. Pramod Aggarwal and Others, , (ix) Sashi Jena and Ors. v. Khadal Swain and Anr. reported in 2004 SCC (Cri) 1077.

3. Now having considered the rival submissions of the parties I find the question arises for decision in the instant criminal revision, firstly, as to whether the petitioners, who have been arrayed as accused in the petition of complaint before issuance of process has any locus standi to move this Hon''ble Court seeking quashing of the complaint on the ground no offence has been made out or challenging any other interlocutory order passed before issuance of summons and if the answer on that score is in affirmative then in that case to determine whether the allegations made in the complaint together with the initial deposition of the witnesses disclosed the commission of the offences for which cognizance has been taken and then to see whether the order impugned is in accordance with law or not.

4. In this connection the decision of this criminal revision certainly be profited by the law laid down by the Hon''ble Apex Court in the following decisions; In the case of Chandra Deo Singh v. Prokash Chandra Bose @ Chabi Bose and Anr. reported in AIR 1963 SC 1430, a 5 Judges Bench of the Supreme Court held as follows;

Taking the first ground, it seems to us clear from the entire scheme of Ch. XVI of the Code of Criminal Procedure that an accused person does not come into the picture at all till process is issued. This does not mean that he is precluded from being present when an enquiry is held by a Magistrate. He may remain present either in person or through a counsel or agent with a view to be informed of what is going on. But since the very question for consideration being whether he should be called upon to face an accusation, he has no right to take part in the proceedings nor has the Magistrate any jurisdiction to permit him to do so. It would follow from this, therefore, that it would not be open to the Magistrate to put any question to witnesses at the instance of the person named as accused but against whom process has not been issued; nor can he examine any witnesses at the instance of such a person. Of course, the Magistrate himself is free to put such questions to the witnesses produced before him by the complainant as he may think proper in the interests of justice. But beyond that, he cannot go. It was, however, contended by Mr. Sethi for respondent No. 1 that the very object of the provisions of Ch. XVI of the Code of Criminal Procedure is to prevent an accused person from being harassed by a frivolous complaint and, therefore, power is given to a Magistrate before whom complaint is made to postpone the issue of summons to the accused person pending the result of an enquiry made either by himself or by a Magistrate subordinate to him. A privilege conferred by these provisions can, according to Mr. Sethi, be waived by the accused person and he can take part in the proceedings. No doubt, one of the objects behind the provisions of S. 202, Cr. P. C. is to enable the Magistrate to

scrutinize carefully the allegations made in the complaint with a view to prevent a person named therein as accused from being called upon to face an obviously frivolous complaint. But there is also another object behind this provision and it is to find out what material there is to support the allegations made in the complaint. It is the bounden duty of the Magistrate while making an enquiry to elicit all facts not merely with a view to protect the interests of an absent accused person, but also with a view to bring to book a person or persons against whom grave allegations are made. Whether the complaint is frivolous or not has, at that stage, necessarily to be determined on the basis of the material placed before him by the complainant. Whatever defence the accused may have can only be enquired into at the trial. An enquiry under S. 202 can in no sense be characterized as a trial for the simple reason that in law there can be but one trial for an offence. Permitting an accused person to intervene during the enquiry would frustrate its very object and that is why the legislature has made no specific provision permitting an accused person to take part in an enquiry. It is true that there is no direct evidence in the case before us that the two persons who were examined as court witnesses were so examined at the instance of respondent No. 1 but from the fact that they were persons who were alleged to have been the associates of respondent No. 1 in the first information report lodged by Panchanan Roy and who were alleged to have been arrested on the spot by some of the local people, they would not have been summoned by the Magistrate unless suggestion to that effect had been made by counsel appearing for respondent No. 1. This inference is irresistible and we hold that on this ground, the enquiry made by the enquiring Magistrate is vitiated. In this connection, the observations of this Court in *Vadilal Panchal Vs. Dattatraya Dulaji Ghadigaonker and Another*, may usefully be quoted.

The enquiry is for the purpose of ascertaining the truth or falsehood of the complaint; that is, for ascertaining whether there is evidence in support of the complaint so as to justify the issue of process and commencement of proceedings against the person concerned. The section does not say that a regular trial for adjudging the guilt or otherwise of the person complained against should take place at that stage, for the person complained against can be legally called upon to answer the accusation made against him only when a process has issued and he is put on trial. (Para 7)

5. In the case of *Smt. Nagawwa v. Veeranna Shivalingappa Konjalgi and Ors.* reported in 1976 SCC (Cri) 507, the Apex Court held as follows;

It would thus be clear from the two decisions of this Court that the scope of the inquiry u/s 202 of the Code of Criminal Procedure is extremely limited - limited only to the ascertainment of the truth or falsehood of the allegations made in the complaint - (i) on the materials placed by the complainant before the court; (ii) for the limited purpose of finding out whether a prima facie case for issue of process has been made out; and (iii) for deciding the question purely from the point of view of the complainant without at all advert to any defence that the

accused may have. In fact it is well settled that in proceedings u/s 202 the accused has got absolutely no locus standi and is not entitled to be heard on the question whether the process should be issued against him or not. (Para 4)

6. In the case of *S.S. Khanna v. Chief Secretary, Patna and Anr.* reported in 1983 SCC (Cri) 562, the Apex Court held as follows;

An inquiry u/s 202 of the Code is not in the nature of a trial for there can be in law only one trial in respect of any offence and that a trial can commence only after process is issued to the accused. The said proceedings are not strictly proceedings between the complainant and the accused. A person against whom a complaint is filed does not become an accused until it is decided to issue process against him. Even if he participates in the proceedings u/s 202 of the Code, he does so not as an accused but as a member of the public. The object of the inquiry u/s 202 is the ascertainment of the fact whether the complaint has any valid foundation calling for the issue of process to the person complained against or whether it is a baseless one on which no action need be taken. The section does not require any adjudication to be made about the guilt or otherwise of the person against whom the complaint is preferred. Such a person cannot even be legally called to participate in the proceedings u/s 202 of the Code. The nature of these proceedings is fully discussed by this Court in two cases *Vadilal Panchal v. Dattatraya Dulaji Ghadigaonker* and *Chandra Deo Singh v. Prokash Chandra Bose* in which Section 202 of the former Code of Criminal Procedure arose for consideration. The present Section 202 being a substantial reproduction of the former Section 202, the observations made by this Court on the nature of the proceedings under that section would have to be accepted as governing the proceedings u/s 202 of the Code. (Para 8)

7. In a very recent decision in the case of *Prabha Mathur and Anr. v. Pramod Aggarwal and Ors.* reported in (2008) 3 SCC (Cri) 787, the Supreme Court in the light of the law laid down in the case of *Chandra Deo Singh v. Prokash Chandra Bose @ Chabi Bose and Anr.* (supra) and *Smt. Nagawwa v. Veeranna Shivalingappa Konjalgi and Ors.* (supra), further observed as follows;

...It is no doubt true, as held by this Court in *Nagawwa v. Veeranna Shivalingappa Konjalgi* and reiterated in several other cases that the accused has no locus standi at the stage of investigation and he cannot insist for hearing before process is issued against him. It was also held in *Chandra Deo Singh v. Prokash Chandra Bose* and in *Sashi Jena v. Khadal Swain* that at the most, an accused may remain present with a view to be informed as to what is going on and nothing more. It is equally correct that if a person has no locus standi or right of hearing, such right does not accrue in his favour by an indirect process.

8. Thus, the judicial authorities are uniform on the point that before process is issued no accused person has got any locus standi and is not entitled to be heard on the question whether the process should be issued against him or not. In the instant case, the matter is still pending before the Learned Court below at the

stage of enquiry u/s 202 of the Code and no final decision has yet been taken whether process should be issued against the petitioners or not, as such there is no scope available to the petitioners to move this Court for quashing of the complaint as well as challenging the order of enquiry u/s 202 of the Code until process is issued against him. Since it is found that the petitioners has no locus standi to move this Court challenging the impugned proceeding at this stage as such there is no question to adjudicate the other points raised in the instant criminal revision.

9. This criminal revisional application has no merit and accordingly stands dismissed.

10. Criminal Section is directed to deliver urgent Photostat certified copy of this Judgement to the parties, if applied for, as early as possible.