

(2022) 05 CAL CK 0004

In the Calcutta High Court

Case No : MAT No. 432 Of 2022, CAN 1 Of 2022

Sekh Jamir And Others

APPELLANT

Vs

Central Bureau Of Investigation And Others

RESPONDENT

Date of Decision : 02-05-2022

Acts Referred:

Constitution Of India, 1950 — Article 32, 226
Code Of Criminal Procedure, 1973 — Section 173(8), 482
Indian Penal Code, 1860 — Section 34, 302

Citation : (2022) 05 CAL CK 0004

Hon'ble Judges : Prakash Shrivastava, CJ;Rajarshi Bharadwaj, J

Bench : Division Bench

Advocate : Kishore Datta, Debasish Ghosh, Nilanjan Adhikari, Subhajit Roy, Phiroze Edulji, Samrat Goswami, Anirban Ray, Raja Saha, Nilotpall Chatterjee

Final Decision : Dismissed

Judgement

Prakash Shrivastava, CJ

1. This appeal at the instance of the writ petitioners is directed against the order of the learned Single Judge dated 21st March, 2022 whereby WPA 3312 of 2022 has been disposed of with liberty to the appellants to avail the remedy under Section 482 of Cr.P.C.

2. The appellants had approached the Writ Court with the plea that the First Information Report (FIR) No. 71 dated 30th March, 2021 was lodged at Marishda Police Station, Contai sub-division under Section 302/34 of the IPC in respect of the incident which took place on 30th March, 2021. After investigation, the charge-sheet/final report was filed on 30th June, 2021 and on 6th December, 2021, ACJM, Contai had committed the case for trial, but thereafter, the respondent no. 2, CBI, had lodged the FIR on 21st December, 2021 for same offence, hence, in the writ petition, the prayer was made to quash the FIR dated 21st December, 2021.

3. Learned Single Judge in the order under appeal has taken the view that in the facts of the case, interference under Article 226 of the Constitution is not warranted especially when an alternative effective remedy is available to the appellant under Section 482 of Cr.P.C. Hence, liberty has been granted to avail that remedy.

4. Submission of learned Counsel for the appellant is that the CBI has registered the second FIR without jurisdiction and that the appellant cannot challenge the second FIR registered by the CBI in the proceedings under Section 482 of Cr.P.C. because the second FIR has not been registered in accordance with the provisions of the Cr.P.C. In support of his submission, he has placed reliance upon the judgments of the Hon'ble Supreme Court in the matter of State of Punjab vs. Davinder Pal Singh Bhullar and Others reported in (2011) 14 SCC 770, in the matter of Gian Singh vs. State of Punjab and Others reported in (2012) 10 SCC 303 and in the matter of State represented by Inspector of Police vs. M. Murugesan and Another reported in (2020) 5 SCC 251 and Madras High Court in the matter of R. Sankarasubbu vs. The Commissioner of Police, Egmore, Chennai and Others reported in (2013) 1 CTC 1.

5. Learned Counsel for the respondent CBI has raised the preliminary objection that the writ petition is liable to be dismissed on the ground of suppression of material and committing fraud upon the Court by filing the incomplete charge-sheet and suppressing the relevant page of the charge-sheet, he submits that no fresh FIR has been registered and the CBI is carrying out the investigation as per the dictum of the full bench judgment of this Court dated 19th August, 2021 passed in WPA(P) 142 of 2021 in the case of Susmita Saha Dutta vs. The Union of India and Others and connected petitions and that the CBI in the supplementary affidavit dated 14th March, 2022 filed in CAN No. 5 of 2022 in Susmita Saha Dutta (supra) has duly disclosed this fact and this Court in the proceedings dated 14th March, 2022, in that case, has taken the facts on record. He submits that no second FIR has been registered and that the appellant has remedy under Section 482 of Cr.P.C.

6. We have heard the learned Counsel for the parties and perused the record. A complete charge-sheet has been placed before us by the respondent no. 2 which reveals that the appellant had not filed the last page of the charge-sheet which clearly mentions about permission to take up further investigation under Section 173(8) of Cr.P.C. and to submit supplementary charge-sheet in continuation of investigation in respect of the rest FIR named and other accused persons, if sufficient evidence is found as well as if arrest is made in future and obtaining Chemical Examination Reports from FSL, Kolkata. This apparently shows that the appellants had not approached the Writ Court with clean hands, therefore, they are not entitled to any relief in the petition.

7. Referring to the various documents, learned Counsel for the respondent no. 2 has pointed out that no fresh FIR has been registered but the FIR has been re-registered with the CBI to undertake further investigation.

8. Even otherwise the order of the learned Single Judge reveals that appellants have not been left remediless. Learned Single Judge has found that the appellants have alternative effective remedy under Section 482 of the Cr.P.C. which they can avail, therefore, has found in the facts of the case that interference in exercise of the jurisdiction under Article 226 is not warranted. It is settled position in law when the remedy under Section 482 is available, the High Court should be loath and circumspect to exercise the jurisdiction under Article 226. The Hon'ble Supreme Court in the matter of State of H.P. vs. Prithi Chand and Another reported in (1996) 2 SCC 37 has held:

"13. When the remedy under Section 482 is available, the High Court would be loath and circumspect to exercise its extraordinary power under Article 226 since efficacious remedy under Section 482 of the Code is available. When the court exercises its inherent power under Section 482, the prime consideration should only be whether the exercise of the power would advance the cause of justice or it would be an abuse of the process of the court. When investigating officer spends considerable time to collect the evidence and places the charge-sheet before the court, further action should not be short-circuited by resorting to exercise inherent power to quash the charge-sheet. The social stability and order requires to be regulated by proceeding against the offender as it is an offence against the society as a whole. This cardinal principle should always be kept in mind before embarking upon exercising inherent power. The accused involved in an economic offence destabilises the economy and causes grave incursion on the economic planning of the State. When the legislature entrusts the power to the police officer to prevent organised commission of the offence or offences involving moral turpitude or crimes of grave nature and are entrusted with power to investigate into the crime in intractable terrains and secretive manner in concert, greater circumspection and care and caution should be borne in mind by the High Court when it exercises its inherent power. Otherwise, the social order and security would be put in jeopardy and to grave risk. The accused will have field day in destabilising the economy of the State regulated under the relevant provisions."

9. Considering the similar issue in reference to exercise of power under Article 32 of the Constitution when the remedy under Section 482 of the Cr.P.C. was available, the Hon'ble Supreme Court in the matter of Arnab Ranjan Goswami vs. Union of India and Others reported in (2020) 14 SCC 12 has held that:

"57. We hold that it would be inappropriate for the Court to exercise its jurisdiction under Article 32 of the Constitution for the purpose of quashing FIR No. 164 of 2020 under investigation at N.M. Joshi Marg Police Station in Mumbai. In adopting this view, we are guided by the fact that the checks and balances to ensure the protection of the petitioner's liberty are governed by the CrPC. Despite the liberty being granted to the petitioner on 24-4-2020, it is an admitted position that the petitioner did not pursue available remedies in the law, but sought instead to invoke the jurisdiction of this Court. Whether the

allegations contained in the FIR do or do not make out any offence as alleged will not be decided in pursuance of the jurisdiction of this Court under Article 32, to quash the FIR. The petitioner must be relegated to the pursuit of the remedies available under the CrPC, which we hereby do. The petitioner has an equally efficacious remedy available before the High Court. We should not be construed as holding that a petition under Article 32 is not maintainable. But when the High Court has the power under Section 482, there is no reason to by-pass the procedure under the CrPC, we see no exceptional grounds or reasons to entertain this petition under Article 32. There is a clear distinction between the maintainability of a petition and whether it should be entertained. In a situation like this, and for the reasons stated hereinabove, this Court would not like to entertain the petition under Article 32 for the relief of quashing the FIR being investigated at N.M. Joshi Police Station in Mumbai which can be considered by the High Court. Therefore, we are of the opinion that the petitioner must be relegated to avail of the remedies which are available under the CrPC before the competent court including the High Court.”

10. The view which is taken by the learned Single Judge is duly supported by the above judgments of the Hon’ble Supreme Court. Since, alternative efficacious remedy under Section 482 of the Cr.P.C. is available which the appellants may avail in accordance with law, therefore, we are not examining the issue on merit which has been argued before this Court by referring to several judgments.

11. Hence, for the reasons assigned above we find no ground to interfere in the order of the learned Single Judge. The appeal is accordingly dismissed.