
(2001) 05 CAL CK 0013
In the Calcutta High Court
Case No : C.R.R. No. 340 of 2001

S.K. Ansar Ali

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 25-05-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164
Penal Code, 1860 (IPC) — Section 120B, 201, 279, 302, 304A

Citation : (2001) 2 ILR (Cal) 91

Hon'ble Judges : Debiprasad Sengupta, J

Bench : Single Bench

Advocate : Ganesh Sribastava, for the Appellant; Ashim Kumar Roy, for the Respondent

Final Decision : Dismissed

Judgement

Debiprosad Sengupta, J.—This is an application for quashing of proceeding being G.R. Case No. 1844 of 1999 arising out of Shibpur P.S. case No. 234 dated October 18, 1999, under Sections 302/120B/34 of Indian Penal Code.

2. The aforesaid case was registered on the basis of a complaint lodged by one Nizam Khan alleging commission of offences under Sections 279/427/304A of the Indian Penal Code. The allegation made in the F.I.R. was that on October 16, 1999, at about 10.00 P.M. the said Nizam Khan and his two friends namely So Safik Mir and Sabir Mir, while traveling on a Motor cycle, met an accident with another Motor cycle. All of them sustained injuries, but Safik Mir sustained some serious injuries and he was admitted in the S.S.K.M. Hospital, Calcutta, where he succumbed to his injuries on October 17, 1999.

3. On the basis of the aforesaid complaint the case was registered with Shibpur Police station and investigation was taken up by the Police. In course of investigation a prayer was made by the investigating agency on March 27, 2000, to change the sections and to convert the case to one under Sections 302/201/120B/34 Indian Penal Code. Such prayer was made by the investigating

agency on the basis of some materials collected by it. The prayer was allowed by the learned Magistrate. Thereafter on completion of investigation a chargesheet was submitted by the police under Sections 302/120B/34 of the Indian Penal Code and cognizance of offence was taken on the basis of such chargesheet.

4. The grievance of the Petitioner is that although the case was initially registered under Sections 279/427/304A Indian Penal Code, the same was converted to one under Sections 302/120B/34 of the Indian Penal Code. But at the time of such conversion the Petitioners were not given any notice and the learned Magistrate without proper application of mind allowed the prayer of the investigating agency. It is the submission of the learned Advocate of the Petitioner that investigation was made in this case in a perfunctory manner and chargesheet was submitted by the police without conducting proper investigation. Accordingly the cognizance of offence taken by the learned Magistrate is bad in law. But I am unable to accept such contention made on behalf of the Petitioners. In the present case diary was called for and the same was produced by the learned Advocate of the State. From a perusal of the case diary it appears that sufficient materials were collected by the investigating agency to justify the conversion of the case to one u/s 302 of the Indian Penal Code. Apart from this, I fail to understand how the Petitioner No. 2 being the de facto complainant of the case can be aggrieved by such conversion of the case to one u/s 302 Indian Penal Code. Being the de facto complainant he should have always an interest to see that the actual offender is punished. It appears from the case diary that in course of investigation police examined one Sk. Montu, who stated that on the night of October 16, 1999, at about 22.00 hours he saw the accused Sabir along with others five persons assaulting the deceased. His statement was judicially recorded u/s 164 Code of Criminal Procedure. The autopsy surgeon also gave his opinion at a subsequent stage that the cause of death might be homicidal in nature. After going through the case diary I find there are materials to justify the conversion of the case to one u/s 302 Indian Penal Code.

5. The learned Advocate of the Petitioners further submits by referring to the chargesheet that in course of investigation of the aforesaid case a complaint was received by the I.O. on October 21, 1999, from one Kalu Mir, elder brother of the deceased Safik Mir, wherein he suspected some foul play in the death of Safik Mir. He also suspected Sabir Mir, Nizam Khan to have their hands in committing murder of Safik. Having received such complaint from Kalu Mir the same was enquired into by the I.O. and the same was found to be correct.

6. The learned Advocate of the Petitioner submits that although such a complaint was received by the I.O. of the case from Kalu Mir, no case was registered on the basis of such complaint. The complaint of Kalu Mir was simply tagged with Shibpur P.S. Case No. 234/99, which is not permissible under the law. When ever any complaint is lodged alleging commission of any cognizable offence, it is the statutory duty of the police to register a specific case on such complaint. But I

can not accept such contention. I have gone through the case diary. I have also perused the complaint made by Kalu Mir. Such complaint was received by the 1.0. in course of investigation of Shibpur P.S. Case No. 234/99. Kalu Mir is none but the elder brother of the deceased. As he suspected some foul play in the death of his brother Safik., he thought it was his duty to inform the police about the actual cause of death of his brother. Police might have received number of letters/complaints in course of investigation, but police is not duty bound to register cases one after another on receipt of such letters/complaints. Accordingly such complaint of Kalu Mir was included in the case diary and the investigation proceeded keeping in view such complaint of Kalu Mir. In my considered view nothing wrong was committed by the 1.0. by not registering a different case on the basis of such complaint.

7. I have heard the learned Advocates of the respective parties. I have also gone through the connected papers. In my considered view this is not a fit case for quashing of proceeding. After completion of investigation a prima facie case was made out and chargesheet was submitted by the police. At this initial stage it will not be proper for this Court to interfere with the proceeding. The present application accordingly fails and the same is dismissed.

8. The case diary may be returned to the learned Advocate appearing for the state.