
(1996) 02 CAL CK 0030
In the Calcutta High Court
Case No : Criminal Rev. No. 1602 of 1994

Smt. Aloka Devi alias Aloka Sharma Sarkar	APPELLANT
Vs	
The State	RESPONDENT

Date of Decision : 23-02-1996

Acts Referred:

Constitution of India, 1950 — Article 245, 246
Criminal Procedure Code, 1973 (CrPC) — Section 154
Penal Code, 1860 (IPC) — Section 379
West Bengal Minor Minerals Rules, 1973 — Rule 18(1), 19(1)

Citation : (1996) 1 CALLT 351

Hon'ble Judges : Rabin Bhattacharyya, J

Bench : Single Bench

Advocate : Asok Kumar Chakraborty, Pulakesh Bajpayee and P.R. Chakraborty, for the Appellant; D.P. Sengupta, Amicus Curie, for the Respondent

Judgement

Rabin Bhattacharyya, J.—This criminal revision is aimed at for quashing of the proceedings pending disposal before the learned SDJM in respect of PS Case No. 367(8) of 1992 against the petitioners, who are hauled up for having committed offences under Rules 18(1) & 19(1) of the West Bengal (Mines and Minerals) Rules 1973 read with Section 379 of the IPC.

2. In the advent of the criminal proceedings, I think now it is necessary to extract the allegations made by the petitioners in their revisional petition, although no statement of objection filed by the respondents.

3. The investigating agency was booked with a telephonic message on 21.8.92 that Truck No. WBQ 520 loaded with sand was proceeding towards Burdwan with a metioric speed. It raised a loud alarm for the investigating agency. It immediately took up the cudgel of investigation and the offending truck was intercepted on way to Burdwan.

4. While attacking the FIR and the charge-sheet, the petitioners are vociferous that they did never commit any offence of any kind as spoken to by the

respondents opposite parties as their action was all along on the clean state. The petitioners are immune, who bore no vicarious liability.

5. To give a boost to the claim, the petitioners have challenged the propriety of the action of the investigating agency on the count that the legislative competence has been forfeited for the enactment of the Mines and Minerals (Regulation and Development) Act, 1957. The power of legislation has been wrested by the Central Govt. under Entry 54, List-1, Schedule-VII read with Articles 245 and 246 of the Constitution of India. The action, as alleged by the respondent opposite parties, never attributed to any mining or winning operation. Neither the West Bengal (Mines & Minerals Rules) 1973, nor Section 379 of the IPC is attracted, in case of lifting of sand from the river bed, if.

6. In the perspective, both the FIR and charge-sheet are liable to be quashed. It is a sterile action of the investigation agency.

7. Now the question that becomes germane for consideration is as to whether the proceedings should continue in the background of the factual exposure of the case.

8. Returning to examine the case of the respective parties, it is glaring that the investigating agency launched a crusade to flush out the criminal; but when one walks through the bosom of the materials on record, it is note worthy that the boot is on the other leg. The investigating agency lingers on imagination about the commission of offence by the accused petitioners having its pedestal on the shallow materials. It may be legitimately inferred for the materials disclosed that it is a faint attempt to chase a wild goose on the illformed information. A mere information without anything more cannot be used as a tool to rope in the petitioners. Seizure of a printed challan revealing the name of one Raja imprinted on it which bore the signature of the permit holder does not constitute any offence within the fold of Rules 18(1) & 19(1) of the West Bengal(Mines & Minerals) Rules, 1973 nor Section 379 of the IPC could be taken aid of to hook the petitioners with the alleged commission of offences. These rules were not born for punishment of the carrier and his employees when their acts and deeds do not bore even the shadow of any offence, as highlighted by Rules 18(1) & 19(1) of the Rule of 1973. It is meant for the quarry owners who are liable to an action for non-payment of royalties, in respect of the quarry they hold under lease. It is admitted on all hand that the petitioners are not enjoying any mining lease nor they are the owners of any quarry. The applicability of rules falls on different premises. The publicity of the alleged commission of offences lands on a wrong shore.

9. In the background, I cannot help holding that the image of the investigation is not only tarnished, but also overwhelmingly shadowed as it conveys a mere shadow without any substance in it.

10. In my view, it is a tough climb for the investigation. However, the climb does wonder. In the case at hand, both the FIR and charge-sheet when read in

conjunction with each other or in isolation do not reveal any significant material disclosing prima facie of any cognizable offence. No court of law will shift its glance from the FIR and charge-sheet, as the court is required to get a glimpse of the facts from them to adjudge prima facie the commission of offence. They, in my view, even remotely do not point to any commission of offence. The accusations made by the investigating agency can be safely interpreted and translated into a futile exercise of investigation of startling disproportion when the investigation is bereft of any profile.

11. I have taken my voyage inquest of truth for more often than not, but it is a complete deluge for the investigating agency for the rickety materials collected by the investigation agency to haul up the petitioner by means other than holy. It is well settled principle of law in the matter of quashing of proceedings, which has been whipped up by different courts of our country, where the Apex Court forms no exception that a proceeding could be quashed, if it is found prima facie that the complaint does not disclose any commission of offence. A mere carrier of sand cannot foster any offence unless there be prima facie materials to proceed against them. The investigating agency cannot be allowed to brim with this sort of investigational ecstasy when the prospect of conviction is bleak. The investigating agency cannot be allowed to swing its pendulum too far on the basis of a claim which is more fictitious than real. But I make myself clear that I refrain from deciding the legislative competence over the field of legislation in relation to the West Bengal (Mines & Minerals Act) 1973 as it is left open. On the existing materials, I have no hesitation to hold that commission of an offence indulged in by the investigating agency is far and few between where court cannot come to the rescue of the investigating agency. The continuation of the proceeding would be purely an abuse of the process of the court.

12. The learned counsel Mr. Sengupta has argued with much dexterity and skill as an amicus curie, who lent all assistance to the court which is laudable enterprise. He has made a submission that neither the chargesheet nor the FIR constitutes any offence, which could not provide any food for the investigating agency to proceed against them. Many decisions have been cited at the bar, which are not of relevance as it may, in my view, will burden the judgment, But, I cite only one, which is the fountain for dispensation of justice for all courts dwelling on quashing of proceedings. The court in State of Haryana and others Vs. Ch. Bhajan Lal and others, had laid the guidelines, when a complaint or the FIR can be quashed. It Is permissible to quash a complaint or FIR, if the allegations made therein are so absurd and inherently improbable that no prudent person can ever reach a just conclusion. I have already indicated that the facts revealed, in this case, do not generate any commission of prima facie offence and, therefore, the continuation of the proceedings will be an abuse of the process to the court. It is an enigma wrapped around a mystery, which the investigating agency fails to pierce. Therefore, it is a frozen investigation. In the context of the on going investigation, petition to dismiss the proceedings before the court has attested to its ability to insubstantiate the allegations, which in the

view of the court, cannot prove to be tishy.

13. Persuaded by the aforesaid reasonings, I have no hesitation to hold that the proceedings should not be continued and, accordingly, the proceeding is quashed, namely, the Burdwan PS Case 367 (8) of 1992 being CR No. 1068 of 1992 pending disposal by the learned SDJM, District Burdwan. In the result, the revision succeeds.

Certified copy, it applied for to be delivered out of turn.