

(2007) 12 CAL CK 0004
In the Calcutta High Court
Case No : C.R.R. No. 116 of 2006

Subhas Chandra Pratihar

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 14-12-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 197, 401, 482
Limitation Act, 1963 — Section 5
Penal Code, 1860 (IPC) — Section 109, 120B, 143, 147, 153

Citation : (2008) CriLJ 1320

Hon'ble Judges : Kalidas Mukherjee, J

Bench : Single Bench

Advocate : Naba Kumar Das, Smita Mishra and Pattik Bandhu Banerjee, for the Appellant; Souvik Mitra and Barindra Nath Roy, for the Respondent

Final Decision : Dismissed

Judgement

Kalidas Mukherjee, J.—This application under Sections 401 and 482 of the Code of Criminal Procedure Code is directed against the order No. 7 dated 11-8-1984 passed by learned Additional Sessions Judge, 2nd Court, Murshidabad in Sessions Serial No. 52 of 1984 whereby and whereunder the learned Additional Sessions Judge transferred the case to the Court of learned S.D.J.M., Lalbag for trial, holding that none of the offences was exclusively triable by the Court of Sessions. The learned Judge also framed charge against all the accused persons under Sections 143, 323/34, I.P.C. excepting Dr. Chatterjee and a separate charge under Sections 323/109, I.P.C. was framed against Dr. Chatterjee. Being aggrieved by the said order, Dr. Subhas Chandra Pratihar, the de facto complainant has preferred the instant application.

2. The case of the petitioner herein, in short, is that he is a medical practitioner and joined the department of Health and Family Welfare under the State of West Bengal on May 24, 1973 and was superannuated on July 31, 2002 as Professor of Urology, Institute of Post-Graduate Medical Education and Research, Calcutta. On

12th May, 1981 at about 9.30 a.m. while he was discharging his official duties as Medical Officer (Surgeon) in the Sub-Divisional Hospital at Lalbag, a group of hooligans under the arrangement, dictate and leadership of the O.P. No. 4 herein entered into the said hospital and abused the petitioner in filthy language without any reason. The said persons assaulted petitioner with fists, blows and slaps causing serious injury to the facial portion of the petitioner which also resulted in the dislocation of a tooth. As a result of the said injury he became senseless and owing to the timely intervention of the staff of the hospital his life was saved. O.P. No. 4 was initially posted there as a Medical Officer and thereafter as a Sub-Divisional Medical Officer. The petitioner soon after the said incident lodged a complaint with the Murshidabad P.S. and the Murshidabad P.S. Case No. 2 dated 12th May, 1981 under Sections 147, 153, 332, 448, 333 and 120-B, I.P.C. was started. Upon completion of the investigation, charge-sheet was submitted and in addition to the said sections, Section 186, I.P.C. was also added in the charge-sheet against all the accused persons including O.P. No. 4. Prior sanction was accorded by the Health Department as required u/s 197 of the Cr. P.C. Some accused persons made an application before the learned S.D.J.M., Lalbag praying for consideration of the charges as made out in the charge-sheet submitted by the police. At the time of hearing of the said application, the learned Additional Public Prosecutor strongly objected to the hearing of the said application on the ground that the offence u/s 333, I.P.C. was exclusively triable by Court of Sessions and the learned S.D.J.M. had no jurisdiction to entertain any application and there was no option but to commit the case to the Court of Sessions. The learned S.D.J.M. held that the charge u/s 333, I.P.C. was not sustainable and decided to try the case himself without committing the same to the Court of Sessions.

3. The petitioner being the de facto-complainant and aggrieved by the said order dated 17th August, 1981 moved a criminal revisional application before the Hon'ble Court being CRR No. 1999 of 1981. The said application was disposed of by the Hon'ble Court directing the S.D.J.M. to commit the case to the Court of Sessions for the offence under Sections 147, 333, 353, 448 and 120-B, I.P.C. Thereafter the case was committed to the Court of Sessions and the same was transferred to the learned Additional Sessions Judge, 2nd Court, Murshidabad, whereupon the learned Judge at the time of consideration of the charge passed the impugned order holding that there was no material to frame charge u/s 333, I.P.C. Being aggrieved by the said order the instant application has been filed.

4. Mr. Naba Kumar Das, learned Counsel appearing on behalf of the petitioner submits that the learned Magistrate at the time of commitment had gone into the merits of the matter and observed that the offence u/s 333, I.P.C. exclusively triable by the Court of Sessions was not maintainable and decided to try the case himself. Mr. Das further submits that being aggrieved by that order the de facto-complainant moved the Hon'ble High Court and the Hon'ble Court observed that the learned Magistrate should have held that a case u/s 333, I.P.C. was made out for which the accused persons were liable to be committed to the Court of

Sessions. It was further observed by the Hon''ble Court that the learned Magistrate exceeded his jurisdiction. It is the contention of Mr. Das that the learned Magistrate subsequently committed the case to the Court of Sessions, and the learned, Additional Sessions Judge by the impugned order held that there was no material to attract Section 333, I.P.C. and that none of the offences was triable exclusively by the Court of Sessions. Under the circumstances the learned Judge transferred the case to the Court of learned S.D.J.M., Lalbag for trial.

5. Mr. Das submits that when the Hon''ble Court earlier observed that the learned Magistrate should have held that a case u/s 333, I.P.C. was made out for which the accused persons were liable to the Court of Sessions, the learned Additional Sessions Judge was bound by the spirit of the order passed by the Hon''ble Court and that the learned Judge ought not to have held that there was no material to attract Section 333, I.P.C. Mr. Das further submits that the spirit of the order earlier passed by the Hon''ble Court was treated in breach by the impugned order passed by the learned Additional Sessions Judge.

6. Mr. Souvik Mitra, learned Counsel appearing on behalf of the O.Ps. other than O.P. No. 4, submits that against the same order passed by the learned Additional Sessions Judge a revisional application was filed by the present petitioner herein which was dismissed for default and although, Section 482, Cr. P.C. has also been added in the present application, the instant application is not maintainable. It is his further contention that in the earlier revision, self-same contentions were raised and because of the previous order for dismissal on the ground of default, the similar question cannot be raised in the instant application. Mr. Mitra submits that no application u/s 5 of the Limitation Act has been filed along with the present revisional application, and as such, the instant application is not maintainable.

7. Mr. Mitra further submits that liberty was given by the Hon''ble Court in the earlier order that it will be for the sessions Court to decide whether on the materials on record a case u/s 333, I.P.C. or 332, I.P.C. was made out. It is the contention of Mr. Mitra that the learned Additional Sessions Judge while considering the materials on record at the time of framing of charge acted within the scope of the matter and there was no breach of the order earlier passed by the Hon''ble Court. Mr. Mitra submits that as none of the offences was exclusively triable by the Court of Sessions, the learned Additional Sessions Judge rightly transferred the case to the Court of learned S.D.J.M., Lalbag for trial.

8. Mr. Barin Roy, learned Counsel appearing on behalf of the O. P. No. 4 submits that the point for determination in the present application is to examine the legality and propriety of the impugned order passed by the learned Additional Sessions Judge. Mr. Roy further submits that the instant application has been filed u/s 401 read with Section 482, Cr. P. C. and the same is maintainable and the question of limitation is not attracted in case of an application u/s 482, Cr.P.C.

9. From the submissions of the learned Counsels of both sides and the materials on record it appears that the earlier application was dismissed for default and, as such, there was no discussion on the points involved on merits. Moreover, the instant application has been filed u/s 482, Cr. P. C. also. That being the position, I find that the instant application is maintainable.

10. As regards the merits of the matter the question is whether the learned Additional Sessions Judge acted within the scope of the matter relating to the framing of charge or thereby violated/committed illegality in breach of the earlier order passed by the Hon"ble Court by entering into the maintainability of the charge u/s 333, I. P. C. It was the observation made earlier by the Hon"ble Court that the learned Magistrate should have held that a case u/s 333, I. P. C. was made out for which the accused persons were liable to be committed to the Court of Sessions. It was the further observation of the Hon"ble Court that it will be for the Sessions Court to decide whether on the materials on record a case u/s 333, I. P. C. or 332 I. P. C. was made out. The above observation by the Hon"ble Court was made while examining the legality and propriety of the order passed by the learned Magistrate at the time of the commitment of the case to the Court of Sessions. It is clear that as per the observation of the Hon"ble Court, the learned Magistrate subsequently committed to the Court of Sessions and when the case came up before the learned Additional Sessions Judge for trial, the said learned Sessions Judge at the time of framing of the charge had the jurisdiction to look into the materials on record so as to decide the question of sufficiency of material with regard to a particular offence. Here in the instant case, the learned Additional Sessions Judge on perusal of the materials on record was satisfied that there was no material for the framing of charge u/s 333, I.P.C. and, therefore, all other Sections being triable by the Court of Magistrate, he transferred the case to the Court of learned S.D.J.M., Lalbag. It is worth mentioning here that the Hon"ble Court also earlier observed that it will be for the Sessions Court to decide whether on the materials on record a case u/s 333 or 332, I.P.C. was made out. I find that the learned Trial Judge acted within the ambit and scope of the matter and there was no breach of the earlier order or spirit of the order passed by the Hon"ble Court. Such being the position, I find that no illegality or material irregularity was committed by the learned Trial Judge and there is no ground to interfere with the impugned order passed by the learned trial Judge. The instant application u/s 401 read with Section 482, Cr. P. C. therefore, stands dismissed. The interim order, if any, stands vacated.

11. Let a copy of this order be sent to the learned Court below immediately.

Urgent Xerox certified copy, if applied for, be handed over to the parties as early as possible.

After the passing of the above order the learned Counsel appearing on behalf of the petitioner prays for stay of operation of the above order. The prayer is considered and rejected.