

(2014) 01 CAL CK 0021
In the Calcutta High Court
Case No : C.R.R. Nos. 100 and 49 of 2014

Sukur Ali Khan

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 30-01-2014

Acts Referred:

Arms Act, 1959 — Section 25, 27
Criminal Procedure Code, 1973 (CrPC) — Section 161, 164, 209, 306, 307
Evidence Act, 1872 — Section 133
Penal Code, 1860 (IPC) — Section 147, 148, 149, 201, 302

Citation : (2014) 01 CAL CK 0021

Hon'ble Judges : Tarun Kumar Gupta, J

Bench : Single Bench

Advocate : Bikash Ranjan Bhattacharyya, Rabi Sankar Chattapadhyay, Uday Sankar Chattapadhyay and Anindya Sundar Das, Advocates for the Appellant; Manjit Singh, P.P. and Amarta Ghosh, Advocates for the Respondent

Judgement

Tarun Kumar Gupta, J.—The order impugned dated 20.12.2013 passed by learned District and Sessions Judge, Purba Midnapore in Sessions Case No. 308 (10) of 2012 arising out of Nandigram Police Station Case No. 282 of 2007 dated 19.11.2007 under Sections 147/148/149/326/307/367/341/342/363/302/201 of the Indian Penal Code and Sections 25/27 of the Arms Act is under challenge in both these applications.

2. Accused Sukur Ali Khan, the petitioner of CRR No. 100 of 2014 along with another, filed a petition in the court below for postponement of hearing in respect of consideration of charge in said case till the compliance with the direction of analogous hearing of said case along with three other cases of the same P.S. arising out of the incident of the same date as passed in CRR No. 3707 of 2012.

3. The petitioners of CRR No. 49 of 2014 namely Narugopal alias Naru Karan and Kanailal Bhunia filed an application under Section 395(2) of the Code of Criminal Procedure in the learned trial court for reference to this court.

4. Learned trial court by the order impugned dated 20.12.2013 rejected those two applications along with some other applications by a composite order. Accordingly, these two applications are taken up together for hearing and order.

5. Admittedly, three other cases being Nandigram P.S. case No. 261 of 2007 dated 17.11.2007, Nandigram P.S. Case No. 262 of 2007 dated 17.11.2007 and Nandigram P.S. Case No. 280 of 2007 dated 18.11.2007 and the F.I.R. of the present Sessions Case being Nandigram P.S. Case No. 282 of 2007 dated 19.11.2007 arose over an alleged incident dated 10.11.2007. All those cases arose on the basis of the complaints filed by different persons. The State of West Bengal filed an application before learned Additional Chief Judicial Magistrate, Haldia for amalgamation of all those four cases but it was rejected. The State of West Bengal preferred a revisional application being CRR No. 3707 of 2012 challenging said order of learned Additional Chief Judicial Magistrate, Haldia, Purba Midnapore. This High Court allowed said prayer for amalgamation by directing that as soon as the investigations are completed and the police reports are filed in the other three cases those will be amalgamated and tried analogously with the present case arising out of Nandigram P.S. Case No. 282 of 2007 dated 19.11.2007 vide order dated 30.11.2012.

6. Learned trial court rejected said application filed by the present petitioner and another on the ground that there were specific directions of the Hon'ble Apex Court passed in Criminal Appeals No. 1514, 1515 and 1516, all of 2013, wherein the trial court was directed to conduct trial of sessions case No. 308 (10) of 2012 arising out of Nandigram P.S. No. 282 of 2007 dated 19.11.2007 on day to day basis and to dispose of the same as expeditiously as possible and preferably within six months after splitting the case, if any, of the accused who is absconding and due to absence it is not possible to conduct the trial. At the time of said rejection learned trial court also took note that similar prayer was made by the petitioners on an early date to be rejected by the trial court but the petitioners did not move to any higher forum against said order of rejection.

7. Mr. Bikash Ranjan Bhattacharyya appearing for the petitioner submits that at the instance of O.P. State of West Bengal the order of analogous hearing of the three cases being case No. 261 of 2007 dated 17.11.2007, 262 of 2007 dated 17.11.2007 and 280 of 2007 dated 18.11.2007 along with the present Sessions Case arising out of Nandigram P.S. No. 282 of 2007 dated 19.11.2007 was passed by this High Court in CRR No. 3707 of 2012 on 30.11.2012. According to him, there is nothing on record to show that said order dated 30.11.2012 has been stayed by any competent court and hence learned court below should have stayed the sessions case arising out of Nandigram P.S. case No. 282 of 2007 dated 19.11.2007 till commitment of other three cases as referred above for analogous hearing.

8. Mr. Manjit Singh, learned P.P., on the other hand, submits that some of the accused persons moved to the Hon'ble Apex Court against said order of amalgamation dated 30.11.2012 passed by this court in CRR No. 3707 of 2012

and that the matter has been admitted by the Hon"ble Supreme Court. According to him, when the Hon"ble Supreme Court is in session of the matter, and there are specific directions of the Hon"ble Apex Court in some other matters relating to the present sessions case, to conduct trial on day to day basis and dispose of the same as expeditiously as possible and preferably within six months after splitting of the case in case of absconding accused then learned trial court did not commit any wrong by rejecting said application.

9. It appears that the order of amalgamation dated 30.11.2012 was passed by this Court in CRR No. 3707 of 2012 at the instance of the State of West Bengal without making the accused persons of said case as parties. It appears that some of the accused persons have already challenged said order of amalgamation dated 30.11.2012 in the Hon"ble Apex Court. Hon"ble Apex Court has been pleased to admit said application of challenge. It further appears that at the time of disposing of criminal appeals being Nos. 1514, 1515 and 1516 of 2013 Hon"ble Apex Court gave specific direction to the learned trial court to conduct the trial of sessions case No. 308(10) of 2012 arising out of Nandigram P.S. case No. 282 of 2007 dated 19.11.2007 on day to day basis and to dispose of the same preferably within six months, if required, after splitting the case of any absconding accused person vide order dated 20.09.2013. Even if there was no specific order of stay of Hon"ble Apex Court relating to order dated 30.11.2012 of this court passed in CRR No. 3707 of 2012 I am of the opinion that learned court below did not commit any wrong by rejecting said application of stay in view of specific directions of the Hon"ble Apex Court at the time of disposal of those three criminal appeals at a date subsequent to 30.11.2012.

10. In view of the discussions as made above I do not think that this court should make any interference in this matter under Section 482 of the Code of Criminal Procedure. Accordingly this application stands rejected.

CRR No. 49 of 2014

11. The petitioners filed an application dated 26.11.2013 praying for referring the matter to this High Court under Section 395(2) of the Code of Criminal Procedure for quashing the charge sheet on account of some impropriety and/or illegality in the charge sheet filed by the police. It was alleged that though accused Saktipada Dalapati (accused No. 88) and the witnesses namely Maniklal Das (witness No. 58), Madan Bar (witness No. 59) and Uttam Bar (witness No. 60) gave statements under Section 161 Cr.P.C. as well as 164 Cr.P.C. admitting that they played their respective parts in the matter of disposing of the dead bodies under threat by some of the accused persons but one of them (Saktipada Dalapati) was made an accused whereas others were made witnesses. It was also alleged that the I.O. had no authority to cite those persons as witnesses without going through the process of tender of pardon to be exercised by the competent magistrate under Section 306 Cr.P.C. it is further case that those three persons namely Madan Bar, Uttam Bar and Maniklal Das not being on bail should have been kept in the custody in terms of Section 306 Cr.P.C. till disposal

of the sessions trial. It was further alleged that evidence of those persons were actually evidences of accomplice having not the same weightage of the evidence of an independent witness. It was finally prayed that for rectification of mistakes committed by the investigating agency the charge sheet was required to be quashed under Section 482 of the Code of Criminal Procedure for drawing up a fresh charge sheet according to law and for that reason the matter should be referred to the High Court under Section 395(2) Cr.P.C. for invoking the powers under Section 482 of the Code of Criminal Procedure.

12. Mr. Bhattacharyya appearing for the petitioners submits that learned trial court failed to appreciate that accused Saktipada Dalapati was standing on the same footings with the three witnesses namely Maniklal Das, Madan Bar and Uttam Bar and that I.O. should not have given different treatment to the persons standing on same footing. He next submits that the witnesses took the plea that the parts played by them in the matter of disposal of the dead bodies were under threat and hence they should have been arrayed as accused persons and thereafter they could have been granted pardon under Section 306 Cr.P.C. According to Mr. Bhattacharyya the charge sheet showing those three persons as witnesses is liable to be quashed on these grounds alone directing the investigating agency to frame charge sheet according to law. According to him, learned trial court miserably failed to discharge her duties on this score and the order impugned should be set aside.

13. Mr. Singh, learned P.P., on the other hand, submits that the statements of accused Saktipada Dalapati and other three witnesses recorded under Section 164 Cr.P.C. showed that they were not standing on the same footing. According to him, accused Saktipada Dalapati was involved in two days' incidents regarding carrying injured persons as well as dead bodies. According to him, if the statements of said Saktipada Dalapati recorded under Section 164 Cr.P.C. are read as a whole then it will appear that he did not state that at all stages he acted under threat of the other accused persons named by him. He next submits that even if the three witnesses namely Uttam Bar, Madan Bar and Maniklal Das are alleged to be accomplices but still their evidences may lead to conviction under Section 133 of the Indian Evidence Act. He finally submits that a sessions court has also the power to proceed against a person as an accused by invoking Section 319 Cr.P.C. with a further power to direct tender of pardon under Section 307 of the Code of Criminal Procedure. Accordingly he submits that learned trial court did not commit any wrong in the matter of rejecting said application for prompt trial of the sessions case in terms of directions of the Hon'ble Apex Court.

14. In reply Mr. Bhattacharyya refers to the case law reported in Dharam Pal and Others Vs. State of Haryana and Another, to impress upon this court that the sessions courts have jurisdiction on committal of a case to it, to take cognizance of the offences of the persons not named as offenders but whose complicity in the case would be evident from the materials available on record.

15. Mr. Bhattacharyya tries to impress upon this court that in terms of said case

of Dharam Pal (supra) even without recording evidence the Sessions Judge may summon those persons to face trial along with those already charge sheeted as accused persons. In this connection he also refers the case law reported in Hardeep Singh Vs. State of Punjab and Others etc. etc., to impress upon this court that the three Judge Bench of the Hon''ble Apex Court have referred the matter to the Hon''ble Chief Justice for placing the matter before a Constitutional Bench of at least 5 Judges to decide the scope, extent and the stage of exercising the power under Section 319(1) of the Code of Criminal Procedure. According to him, learned Sessions Judge could have taken cognizance against those three witnesses as accused persons in view of their statements and thereafter could have granted pardon under Section 307 Cr.P.C. in terms of the case of Dharam Pal (supra).

16. I have considered submissions made by learned counsels of the parties as well as the case laws referred by them.

17. It appears that the ratio of the case of Dharam Pal (supra) has no application in the facts of this case. In the case of Dharam Pal some of the accused persons were shown discharged in the charge sheet under column 2 and the Hon''ble Apex Court held that the Sessions Court had the power even without recording evidence and on the basis of materials lying in case diary to summon those persons after commitment under Section 209 Cr.P.C. to face trial with other accused persons who have been charge sheeted by police. In the case in hand, three persons namely Uttam Bar, Madan Bar and Maniklal Das were not shown as discharged accused persons in the column 2 of the police report (charge sheet). They were cited as witnesses of the case. If a person is cited as a witness and it is found during evidence that he had complicity in the case as an accused then the court has the power under Section 319 Cr.P.C. to summon said person to face the trial as an accused of the case. It is true that the scope, extent and the timing of the exercise of the power under Section 319 Cr.P.C. came for decision before a two-Judge-Bench in the case of Hardeep Singh Vs. State of Punjab and Others, when said two-Judge-Bench referred the matter and it was placed before a three-Judge-Bench. It is true that said three-Judge-Bench in the case of Hardeep Singh and other cases (supra) referred the matter to the Hon''ble Chief Justice of India for referring said matter to a constitutional Bench of at least five Judges. But that does not mean no court can invoke Section 319(1) Cr.P.C. for arraying the person as an accused in a case if his complicity is established during trial. Said exercise of power under Section 319(1) Cr.P.C. has to be conducted in terms of the settled principles of law as on date so long the matter is not further clarified by the Constitutional Bench to be constituted. It appears from the statements of accused Saktipada Dalapati as well as other three witnesses recorded under 164 Cr.P.C. that strictly speaking they were not standing on same footing. It appears from the order impugned that learned trial court considered the applicability of the case of Dharam Pal (supra) and came to a definite finding that said case law had no application in the facts of the present case. Learned trial court also opined that any irregularity in the investigation does not vitiate

the trial unless it can be shown that said irregularity caused a failure of justice. According to Sessions Judge in the case in hand the petitioner accused persons failed to make out any such case of failure of justice and accordingly the petition was rejected on contest. Admittedly, accused Saktipada Dalapati is not coming before the Court alleging that he was made an accused though other persons standing on same footing were made witnesses in the case. It appears, at least prima facie, that the accused Saktipada Dalapati and other three witnesses were not on same footing. The Sessions Court has the power to proceed against any person as an accused under Section 319(1) Cr.P.C. after initiation of the trial. The Sessions Court has also the power to tender pardon to such an accused under Section 307 Cr.P.C. There are specific directions of the Hon''ble Apex Court for early disposal of the pending Sessions case, if required, by continuing trial on day to day basis.

18. Considering all these aspects of the case I am of the opinion that it is not a fit case for interfering in the order impugned by invoking the powers under Section 482 of the Code of Criminal Procedure.

19. However, I make it clear that the observations made in this order are tentative in nature, and that the learned trial Judge should form his own opinion on the basis of materials on record without being influenced by the observations of this Court made in this order.

20. Accordingly, the application is dismissed on contest.

21. Urgent photostat certified copy of this judgment be supplied to the learned counsels of the parties, if applied for.