

(2023) 11 CAL CK 0038
In the Calcutta High Court
Case No : Criminal Revision No. 395 Of 2022

Tarun Kumar Pal	Vs	APPELLANT
State Of West Bengal & Anr		RESPONDENT

Date of Decision : 29-11-2023

Acts Referred:

Constitution Of India, 1950 — Article 226
Indian Penal Code, 1860 — Section 34, 406, 409, 420
Code Of Criminal Procedure, 1973 — Section 155(2), 156(1), 161, 401, 482

Citation : (2023) 11 CAL CK 0038

Hon'ble Judges : Ajay Kumar Gupta, J

Bench : Single Bench

Advocate : Himangshu De, Navanil De, Srinjan Ghosh, Rajeshwar Chakraborty, Subhrajit Dey, Monami Mukherjee, Ranabir Roy Chowdhury, Mainak Gupta

Final Decision : Allowed

Judgement

Ajay Kumar Gupta, J

This is an application filed under Section 401 read with Section 482 of the Criminal Procedure Code, 1973 seeking quashing of the proceeding in connection with Mallarpur Police Station Case No. 49 dated 15.03.2021 under Sections 420, 406, 409 and 34 of the Indian Penal Code giving rise to G.R. Case No. 331/2021 pending before the learned Additional Chief Judicial Magistrate at Rampurhat, Birbhum.

The specific case of the petitioner is that he worked as a Village Level Entrepreneur (VLE) since 2018 under Baraturigram Gram Panchayat, Mayureshwar-I Development Block and Panchayat Samity Office. He is innocent and without his involvement, the Block Development Officer, Mayureshwar-I, District- Birbhum, lodged a complaint on 15.03.2021 regarding involvement in an anomaly with regard to the fund transfer issues to the beneficiaries regarding Awaas Yojana Scheme against Naba Kumar Let, member of Baraturigram Gram Panchayat and Tarun Kumar Pal/present petitioner (VLE) on the basis of enquiry

report as submitted by the Pradhan of Baraturigram Gram Panchayat under Mayureshwar – I.

On the basis of the said complaint, a Mallarpur PS Case No. 49/2021 dated 15.03.2021 has been registered under Sections 420, 406, 409 and 34 of the IPC against Naba Kumar Let, member of Baraturigram Gram Panchayat and Tarun Kumar Pal/present petitioner (VLE).

The role of the petitioner is only Geotagging which is the process of adding geographical identification metadata to various media such as a geotagging photograph or video, websites, SMS messages, QR Codes or RSS feeds and is a form of geospatial metadata.

The present petitioner had taken photographs of the ongoing construction for geotagging. The Awaas Yojana Scheme launched by the Government for constructing houses for poor peoples. The beneficiaries applied for Awaas Yojana Scheme after all formalities and production of relevant documents. Those applications along with the documents of the beneficiaries specifically verified by the Block Development Officer (for short BDO) and confirmed the beneficiaries' name, who are actually eligible to get benefit of such scheme. After getting such confirmation from the Block Development Officer (BDO), those details of the beneficiaries were again verified and allotted the funds by the District Magistrate to the respective beneficiaries. Thereafter, the BDO distributed the fund by transferring to the bank accounts to the beneficiaries to the tune of Rs. 60,000/- out of total amount of Rs 1,20,000/- each as a first installment.

It was submitted by the Ld. Senior Advocate for the petitioner that after receiving the said sum, beneficiaries started their construction work up to Linton as per the scheme and thereafter they applied for their second installment for Rs. 50,000/- out of remaining sum of Rs. 60,000/- with their application forms and their photographs which were taken in front of their houses. But the said second installment was allegedly siphoned or misappropriated by the member of the gram panchayat, Naba Kumar Let by transferring the fund to the respective bank accounts of his nearby relatives instead of actual beneficiaries' accounts.

The said fact was admitted by Naba Kumar Let after detection by the authorities and admitted his guilty to the Pradhan and paid a sum of Rs. 4,40,000/- and further undertook to pay the remaining amount of Rs. 20,000/- within seven days.

Despite of the said facts, Naba Kumar Let has not yet been arrested by the police since registration of the instant case. However, the petitioner is innocent and he had only taken a photograph of the houses which were originally constructed by the beneficiaries after receiving first installment of the funds from the concerned department. He was not involved in any way in siphoning or misappropriating of the funds, which was transferred in different new bank accounts of the relatives of Naba Kumart Let. He is no way connected in the instant case since he was never entrusted any valuable property or fund. It can be ascertained from the

FIR as well as chargesheet. In the FIR as well as in the chargesheet his name was incorporated purely on the basis of suspicion only to harass the present petitioner without his involvement. Furthermore, the allegation against the present petitioner is vague, bald and purely based on suspicion and that cannot be sustained in law. As such the proceeding against the present petitioner is liable to be quashed, otherwise it would be gross abuse of process of law and greatly prejudice to the petitioner. Written notes of argument also filed on behalf of the petitioner.

Per contra, learned advocate appearing on behalf of the State produced the case diary and submitted that the FIR was lodged only on the basis of suspicion for his involvement. During investigation, the witnesses have stated about of his involvement on the basis of suspicion circumstances. Accordingly, charge-sheet has been filed by the investigating officer of this case and cognizance was taken by the trial Court. Contention of the present petitioner regarding innocent is matter of trial. As such the application should be dismissed.

Heard learned advocates for the parties and on perusal of the case diary including FIR, charge-sheet and statements recorded under Section 161 of the Cr.P.C. in the present case, every where it has been mentioned the role of the present petitioner as suspicious. No specific role has been attributed either in the FIR or in the chargesheet. It is very clear case that as per Awaas Yojana Scheme, first installment of Rs. 60,000/- out of Rs. 1,20,000/- was transferred to the beneficiaries and after receiving the said sum beneficiaries started their construction work up to Linton and thereafter as per scheme they again applied for second installment of Rs. 50,000/- out of remaining sum of Rs. 60,000/- with their application forms and their photographs, which were taken in front of their houses. At the same time, the present petitioner (VLE) only taken the photographs of such incomplete construction and tagged their houses' location in a centralized software to see whether the sum has been utilized in a proper way or not. There is no other role played by the VLE except their current houses' location. He has no role to transfer the funds to the accounts of the beneficiaries or relatives of the another accused Naba Kumar Let.

Furthermore, Naba Kumar Let, himself came forward and admitted his guilty to the Pradhan in writing and also paid a sum of Rs. 4,40,000/- out of siphoned amount and further undertook to pay the rest amount of Rs. 20,000/- within seven days. Therefore, I do not find any specific allegation against the present petitioner for misappropriation of funds or breach of trust or siphoning of the fund as alleged by the Block Development Officer in his complaint dated 15.03.2021. No ingredients have been fulfilled as required against the accused/petitioner of the alleged offences.

Accordingly, this Court finds the case initiated against him is purely on the basis of suspicion as appears in the FIR as well as in the charge-sheet. Case alleging cognizable offences without specific allegation or disclosing materials against the petitioner cannot be continued. There must be direct allegation and/or material

or involvement in the alleged offence but that is entirely missing. Allegation against him is only on the basis of doubt or suspicion.

We may not forget at this moment the well-settled law declared in the judgment of Hon'ble Supreme Court in *State of Haryana & Ors. vs. Bhajanlal & Ors.* 1992 Supp. (1) Supreme Court Cases 335, which has laid down the basic points for consideration pursuant to which a complaint may be entertained in accordance with law before a Court of law. The Court has narrated down as to when the extraordinary power of this Court under Section 482 of the Code of Criminal Procedure may be espoused. Relevant portion thereof may beneficially be quoted below: -

"102. This Court in the backdrop of interpretation of various relevant provisions of CrPC under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 of the Constitution of India or the inherent powers under Section 482 CrPC gave the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of the court or otherwise to secure the ends of justice. Thus, this Court made it clear that it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list to myriad kinds of cases wherein such power should be exercised: (SCC pp. 378-79, para 102)

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a

specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

In the strength of above discussions made by this Court and in view of observation made by the Hon’ble Supreme Court in the above cited judgment, this Court fully satisfies that this case has merit to quash the aforesaid proceeding. Accordingly, the revisional application being CRR 395 of 2022 is hereby allowed and, thus, disposed of without any order as to costs.

The proceeding in connection with Mallarpur Police Station Case No. 49 dated 15.03.2021 under Sections 420, 406, 409, 34 of the Indian Penal Code giving rise to G.R. Case No. 331/2021 pending before the learned Additional Chief Judicial Magistrate at Rampurhat, Birbhum against the petitioner, Tarun Kumar Pal is hereby quashed.

C.D. be returned to the learned advocate for the State.

Department is directed to communicate this order to the learned trial Court immediately for information.

All parties shall act on the server copy of this judgment duly downloaded from the official website of this Court.

Urgent certified photocopy of this order, if applied for, be given to learned advocates for the parties upon compliance of all requisite formalities.