
(2016) 04 CAL CK 0110
In the Calcutta High Court
Case No : C.R.R. No. 1504 of 2010

Wasir Ahmed

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 22-04-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 188
Penal Code, 1860 (IPC) — Section 2

Citation : (2016) 3 CalHCN 572

Hon'ble Judges : Malay Marut Banerjee, J.

Bench : Single Bench

Advocate : Manjit Singh, P.P. and Anand Keshari, Advocate, for the State;
Tirthankar Ghosh and Satadru Lahiri, Advocates, for the Opposite Party No. 2;
Dipak Kumar Sengupta, Debabrata Ray, Debashis Sinha and Ms. Sharmistha
Dhar, Advocates, for the Petitioner

Final Decision : Dismissed

Judgement

M.M. Banerjee, J. - The revisionist/petitioners have prayed for quashing the proceedings of G.R. Case No. 748 of 2010 arising out of Park Street Police Station Case No. 50 of 2010. Before going into the contention raised in the revisional application within the legal scheme it would not be altogether out of place to refer to the factual matrix of the case as made out in the revisional application in a nutshell.

2. It is stated that petitioner no. 2 Sofia Ahmed is the daughter of petitioner no. 1 Wasir Ahmed. Both are British citizens. Petitioner no.1 is the Chairman of A1-Hamd Great Hall W.S.A. School at 18A, Dr. Sudhir Bose Road, Kolkata ? 700 023 and has his business at Birmingham (U.K.). The petitioner no. 2 studied law from the Inns Court School of Law, London and both at present reside at 22/1, Dent Mission Road, P.S. Ekbalpore, Kolkata ? 700 023. The petitioner no. 1 arranged marriage of petitioner no. 2 with one Dr. Tarifur Rahaman, the opposite party/complainant. It is stated that the petitioner no. 1 at the time of marriage of his

daughter gifted diamond and gold jewellery valued at Rs. 12 lakhs and also cash of Rs. 2 lakhs. Such jewellery given by the petitioner no. 1 was taken by her mother-in-law under instruction of the complainant. The petitioner no.1 arranged for the complainant to settle in England for study and work and has spent more than ₹30,000 British Pounds for accommodation and other expenses of his son-in-law, the complainant of the case and he also arranged for a Halifax Gold Card for his expenses and the complainant used the said card for all his expenses and the petitioner no. 1 had to bear all such expenses. Since the complainant/opposite party no. 2 was unable to open a separate bank account, the petitioner no. 2 opened a joint account with him i.e., her husband and thereafter the complainant opened his separate bank account. It is alleged that ₹4700 British Pounds was transferred from the joint account to the new single account of the complainant and the single new account was used by both the husband and the wife and the complainant also got British citizenship by being married to a British citizen. The petitioner no. 2 transferred some of her money from her husband's account to her own account to pay for bills which were accumulating in England and also for her own personal expenses she had incurred while living in India since January, 2010. It is alleged that after coming to India in or about January, 2010 the complainant started physical and mental torture upon his wife, the petitioner no. 2 whereupon she lodged a complaint with prayer for police investigation under Section 156 (3) Cr.P.C. Such prayer was allowed and Ekbalpur Police Case no. 39 of 2010 was started and the complainant/opposite party no. 2 was arrested and was in police custody for six days and the petitioner no. 2 also filed a maintenance case under Section 125 Cr.P.C. against her husband. It is contended that to create pressure upon the revisionist/petitioners the opposite party no. 2/complainant lodged a complaint under Section 379/406/120B I.P.C. read with Section 66 of Information Technology Act on 03.03.2010 alleging that the petitioner no. 1 in collusion with his daughter have illegally siphoned off ₹10,390 British Pounds from the complainant's account with H.S.B.C. (United Kingdom) to the account of the petitioner no. 2 at Natwest Bank (United Kingdom). It is contended that both the parties are British citizens and the money-in-question was transferred from a bank in U.K. to another bank in U.K. outside India and none of the parties resides within the jurisdiction of Park Street Police Station and no offence can be said to have been committed within the jurisdiction of Park Street Police Station. Further contention is that without the previous sanction of the Central Government in accordance with Section 188 Cr.P.C. the proceedings is not at all maintainable and is liable to be quashed.

3. Mr. Dipak Kumar Sengupta, Ld. Senior Counsel appearing for the revisionist/petitioners argued that the sheer weakness of the complainant's case is manifest from the allegation levelled by him against the revisionist petitioners because it is beyond anybody's comprehension how allegation of theft could be made against a person alleging commission of criminal breach of trust against the same person arising out of the same and identical transaction. It was argued that once the opposite party/complainant got his footing on the soil of a foreign

country at the benevolence of the revisionist/petitioners he took no time to misappropriate the gold and diamond jewellery of his wife and started perpetrating all sorts of torture upon the revisionist petitioner no.2 with a view to making her life a hell so that she parts way with him. It was contended that the torture accelerated to such an extent that the revisionist petitioner no. 2 although belonging to the elite class of society was constrained to initiate proceedings under Section 498A/406/307/325/120B I.P.C. against the opposite party no. 2/complainant and members of his family. It was argued that in his bid to get rid of that criminal prosecution and to create pressure upon the revisionist/petitioners the opposite party no. 2/complainant lodged the instant case i.e., Park Street Police Station Case no. 50 dated 04.03.2010. It was argued that it is not the complainant's case that he had ever entrusted any property with either of the revisionist/petitioners and so the question of criminal misappropriation cannot and does not arise at all. It was further argued that even if it is taken for granted for the sake of argument that some amount was transferred from the single account of the complainant to the account of the revisionist petitioner no.2 that took place in the United Kingdom and so the alleged theft cannot be tried into by Court in India far to speak of any sort of investigation pertaining thereto by Indian Police.

4. With regard to the allegation made under Section 66 of the Information Technology Act the Ld. Advocate argued that Section 78 of the Statute creates bar of investigation into offences under the said Act by a Police Officer below the rank of Deputy Superintendent of Police and in the instant case a sub-Inspector of Police carried out the investigation.

5. It was argued that by the Ld. Advocate that since the aim of the opposite party no.2/complainant in launching the present case is to put the revisionist/petitioners to harassment and as a coercive measure and having particular regard to the factual backdrop of the case the Court should come to the findings that the present proceedings of the criminal case will be an abuse of the process of the Court and should be quashed.

6. The Ld. Advocate appearing for the opposite party no.2/ complainant argued that in terms of Section 2 and 3 of the I.P.C. the Indian Courts have jurisdiction to try the offences complained of. It was further argued that the merits or demerits of the case under Section 498A etc. pending against the complainant cannot be looked into at this stage. It was also argued that since charge-sheet has already been submitted in the instant case the revisional application has become infructuous.

7. The Ld. Public Prosecutor inviting the court's attention to a copy of the report which is in the case diary, submitted before the 9th Metropolitan Magistrate, Calcutta by sub-Inspector Saikat Neogi on 23.02.2012 submitted that there should not be any confusion whether charge-sheet was submitted under Section 66 of the Information Technology Act or not. He emphatically submitted that charge-sheet was submitted excluding Section 66 of Information Technology Act

and that the prosecution will never make out its case under Section 66 of the Information Technology Act. The Ld. Public Prosecutor submitted that such submission made by him may well be recorded by this Court to remove any confusion in future. Such unambiguous and clear submission made by the Ld. Public Prosecutor has been taken note of and it is to be seen whether the continuance of the criminal proceedings, investigation whereof has already ended in submission of charge-sheet, can be said to be an abuse of process of the Court.

8. The Ld. Public Prosecutor argued that whether charge under Section 379 or under Section 406 I.P.C. could be established and proved against the revisionist/petitioners will depend on the nature of the evidence that the prosecution will adduce during trial but the amount of money that was transferred from the account of the complainant/opposite party no. 1 to the account of the revisionist petitioner no. 2 was done by way of operation of computer at a place within the jurisdiction of Park Street Police Station, Calcutta and the offences must be said to have been committed within India and are well triable by Indian Courts.

9. The details of argument advanced by the Ld. Advocate appearing for the revisionist/petitioners relating to the factual backdrop of the case i.e., the relationship of husband and wife between the complainant and the revisionist petitioner no. 2, the help, assistance and benevolence rendered by the revisionist/petitioners to the opposite party no. 2/complainant, sufferings of the revisionist petitioner no. 2 at the hands of the complainant and members of his family giving rise to a criminal case against them, inter alia, under Section 498A/406 I.P.C. are all matters to be examined by the Trial Court on the basis of evidence that may be led by the parties. The most and only important question to be answered in this case is whether the offences complained of can be said to have been committed in India. On careful consideration of the provision contained in Section 188 of the Cr.P.C. I find that the said section applies first, when an offence is committed outside India by a citizen of India whether on the high seas or elsewhere. Indisputably the parties concerned in this case are British citizens. Secondly, if an offence is committed outside India by a person not being such citizen on any ship or aircraft registered in India. In other words, clause (b) applies to offence committed by foreigners on Indian ships or aircraft. So when an offence falls either within clause (a) or clause (b) of Section 188 Cr.P.Code, such offences cannot be enquired into or tried in India except with the previous sanction of Central Government. As already analysed, the case at hand does not come under Section 188 of Cr.P.Code. The question is where the offence has been committed. After going through the materials on record and bearing in mind the argument advanced by the Ld. Counsels appearing for the respective parties as also the argument made by the Ld. Public Prosecutor I find that the allegation is that certain amount of money was transferred from the complainant's account to the account of the revisionist petitioner no. 2 through the internet payment on 12th February, 2010 and 13th February, 2010 and such transaction through internet was carried out from Kolkata. In view of the above I

find no hesitation to hold that the offences complained of have been committed within Indian Territory and having regard to the provisions contained in Section 2 of the Indian Penal Code the revisionist/petitioner may well be tried in India.

10. As already indicated herein above the prosecution will not bank upon its case in-so-far as it relates to commission of offence under Section 66 of the Information Technology Act but in-so-far as it relates to the offences complained of under Section 379/406/120B I.P.C., it is made clear that any observation made herein is not with regard to the merits of the case which will solely depend on the evidence to be adduced by the prosecution and the defence. So the quashing of the proceedings as sought for at the very inception at the pre-trial stage will not be proper. At this stage it cannot be held that the proceedings of the case if allowed to be continued will be an abuse of process of the Court. In the result, this Court does not think it proper to quash the proceedings of G.R. Case no. 748 of 2010 arising out of Park Street Police Station Case No. 50 of 2010. The revisional application fails and is accordingly dismissed.

11. A copy of this order be immediately sent to the Ld. Court below for proceeding with the case in accordance with law as expeditiously as possible.