
(2023) 01 CAL CK 0061
In the Calcutta High Court
Case No : Criminal Revision No. 534 Of 2019

Writuraj Sen & Ors.

APPELLANT

Vs

State Of West Bengal & Anr

RESPONDENT

Date of Decision : 24-01-2023

Acts Referred:

Indian Penal Code, 1860 — Section 34, 186, 285, 286, 323, 353
Code Of Criminal Procedure, 1973 — Section 161

Citation : (2023) 01 CAL CK 0061

Hon'ble Judges : Shampa Dutt (Paul), J

Bench : Single Bench

Advocate : Md. Sabir Ahmed, Md. Abdur Rakib, Biswajit Sarkar, Dhiman Banerjee, Rita Dutta

Final Decision : Dismissed

Judgement

Shampa Dutt (Paul), J

The present revision has been preferred praying for quashing of the proceeding, being G.R. Case No. 3530 of 2017 pending in the court of the Learned Chief Judicial Magistrate at Barasat, District – North 24 Parganas arising out of Barasat Police Station Case No. 875 of 2017 dated October 22, 2017 under Sections 186/353/323/285/286/34 of the Indian Penal Code, 1860.

The petitioner's case in short is that the petitioners have been unnecessarily arraigned as accused persons in connection with a criminal proceeding, being Barasat Police Station Case No. 875 of 2017 dated October 22, 2017 under Sections 186/353/323/285/286/34 of the Indian Penal Code, 1860, without committing any act as narrated in the written complaint. The entire story of the complainant has been concocted only to save the act of atrocities by the police personnel, who assaulted the present petitioners.

That petitioner no.1 Writuraj Sen, is a student of Class XI at present.

Petitioner no. 2 Parvez Khan, is pursuing his studies at present from Bangabasi

College of Commerce at Calcutta.

Petitioner no. 3 Subham Gayen, is a student of 1st Year of Government College of Engineering and Textile Technology at Berhampore, Mushidabad.

Petitioner No. 4 Baijoyonta Roy, is presently pursuing his studies at Barrackpore Rashtra Guru Surendranath College, Barrackpore, North 24 Parganas.

The case of the petitioner is that on date of Kali Puja festival, the petitioners gathered together for celebrating Kali Puja with fire crackers on the roof-top of Banamalipur police quarters, when 5/6 unknown persons suddenly, came to the roof-top of the said police quarters and started assaulting the petitioners. Since the petitioners received injuries and were threatened by those unknown persons, the petitioners immediately came down and could know that the persons, who assaulted them are police personnels attached to Barasat Police Station. The respective family members of the present petitioner took them to the nearest Barasat S D Hospital instantly, where they were treated and released after preliminary treatment.

The present petitioners went to the concerned police station to lodge a written complaint against the said police personnels, but the petitioners were threatened with dire consequences saying that since the petitioner nos. 1 and 2 are the sons of police personnel, the services of their fathers may be affected and they were forced to leave the said police station.

Subsequently, on a later date, the petitioners came to know through the mother of the petitioner no. 1 and the father of the petitioner no. 2 that a criminal case has been started on the basis of a written complaint lodged by one Sujit Kumar Dey, Assistant Sub-Inspector of Police under Sections 186/353/323/285/286/34 of the Indian Penal Code, 1860. In the said written complaint it was alleged that on February 22, 2017 during (Plain Cloth) Mobile Duty (PCMD) in connection with Kali Puja festival, the Inspector-in-Charge under Barasat Police Station at about 19.47 hours received a telephonic information that some persons were using fire-crackers on the roof of 'F' Block at Banamalipur Police Quarter. They reached the roof of 'F' Block and found five (5) persons were using fire-crackers. Then disclosing their identities, they cautioned them to stop the nuisance. But they became furious and with hostile attitude, used abusive languages and obstructed him to do his public duty and also assaulted all of them and then they fled away from the place of occurrence.

On search they found two boxes containing 24 piece in each box total 48 pieces of chocolate bombs and 10 packets of kali patka containing 14 total 28 pieces in each packet and seized the same in presence of the witnesses and after seizure left for the police station.

The complaint was lodged on October 22, 2017 and within six (6) days, the Investigating Agency has completed its investigation and submitted charge-sheet on October 28, 2017. From this very act of hurriedness it clearly indicates

that the present petitioners, who are students and pursuing their studies in schools and colleges, have intentionally been tagged in a criminal proceeding to ruin their future.

That at the time of the incident, your petitioners were students and of tender-age. To celebrate the Kali Puja festival, they were enjoying with fire-crackers, but, in no circumstances the petitioners were in possession of any chocolate bombs. The present petitioners being of young age were in a mode of celebration and were gossiping on the roof-top of the said Banamalipur Police Quarters and it is quite impossible for them to assault five police personnel on duty in civil dresses.

The attending circumstance does not indicate in any manner that the present petitioners, who are students, were able to assault five police personnels and prevent them from discharging their official duties. The injury reports of the petitioners specifically indicate that the petitioners were seriously assaulted and cannot be said to have committed a criminal act.

That there are series of discrepancies in the complaint and to cover up such discrepancies without conducting proper investigation, to shield their own act of assault and atrocities upon the petitioners hurriedly submitted charge-sheet, so that the petitioners cannot take step against them in accordance with law.

That after assault by the police personnel on the roof of the said police quarters and after being treated at the hospital, the petitioners went to the police station for lodging the complaint against those police personnels, but the police officer refused to receive any complaint instead they detained one of the petitioner Pritam Saha and submitted a case against the petitioners.

Admittedly the petitioners were present on the roof and they were celebrating Kali Puja, but did not use high volume fire-crackers. However, one of the residents of the said police quarters, whose husband was posted at Barasat Police Station, had been asking not to use fire on the roof and she intimated her husband and, thereafter, her husband sent some police personnel, who came and assaulted your petitioners.

That in course of investigation, the Investigating Officer recorded the statements of the persons, who were present on the roof and all the witnesses are police personnel and except the police personnel, no independent witness have been examined. The proceeding is completely an outcome of false implication.

Mr. Md. Shabbir Ahmed Learned Counsel for the petitioner has submitted the attending circumstances does not indicate in any manner that the present petitioners, who are students were able to assault five police personnels and prevent them from discharging their official duties.

The proceeding is completely an outcome of false implication and a preventive measure, so that the petitioners did not lodge any complaint against those police personnels.

That continuation of the proceeding is otherwise bad in law and is thus liable to be set aside and /or quashed.

Ms. Rita Dutta Learned counsel for the state has produced and placed the case diary.

Section 186 Indian Penal Code lays down:-

"186. Obstructing public servant in discharge of public functions.—Whoever voluntarily obstructs any public servant in the discharge of his public functions, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Ingredients of offence. — The essential ingredients of the offence under Sec. 186 are as follows:-

- (1) A public servant was in discharge of his official duty;
- (2) Voluntary obstruction was caused to such public servant;
- (3) Such obstruction was in the discharge of public function of such public servant."

Section 353 Indian Penal Code lays down:-

"353. Assault or criminal force to deter public servant from discharge of his duty. —Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Ingredients of offence. — The essential ingredients of the offence under Sec. 353 are as follows:-

- (1) Accused assaulted or used criminal force to a public servant;
- (2) Such public servant was then acting in the discharge of his duty;
- (3) Accused assaulted with the intention of preventing or deterring such public servant from discharging his duty, or
- (4) It was used in consequence of anything done or attempted to be done by the said public servant."

Section 285 Indian Penal Code lays down:-

"285. Negligent conduct with respect to fire or combustible matter.—Whoever does, with fire or any combustible matter, any act so rashly or negligently as to

endanger human life, or to be likely to cause hurt or injury to any other person, or knowingly or negligently omits to take such order with any fire or any combustible matter in his possession as is sufficient to guard against any probable danger to human life from such fire or combustible matter, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Ingredients of offence. — The essential ingredients of the offence under Sec. 285 are as follows:-

- (1) The accused did some act which might endanger human life or was likely to endanger human life or cause hurt or injury to any other person;
- (2) The act complained of was done with fire or any combustible matter;
- (3) The accused was in possession of combustible matter;
- (4) There was probable danger to human life from possession of such matter;
- (5) The accused knowingly or negligently omitted to take such order with it which was sufficient to cause any probable danger to human life from such fire or combustible matter.”

Section 286 Indian Penal Code lays down:-

“286. Negligent conduct with respect to explosive substance.—Whoever does, with any explosive substance, any act so rashly or negligently as to endanger human life, or to be likely to cause hurt or injury to any other person, or knowingly or negligently omits to take such order with any explosive substance in his possession as is sufficient to guard against any probable danger to human life from that substance, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Ingredients of offence. — The essential ingredients of the offence under Sec. 286 are as follows:-

- (1) The accused did some act which might endanger human life or was likely to endanger or cause injury or hurt to any other person;
- (2) The act complained of was done with explosive substance;
- (3) The accused acted rashly or negligently and for the second part the accused must be in possession of an explosive substance;
- (4) The accused neglected to take such order therewith as was sufficient to guard against probable danger to human life.
- (5) The accused was aware of such probable danger.”

Ms. Dutta has submitted that the materials in the case diary contain sufficient evidence in support of the offences alleged. The statements recorded under

Section 161 Cr.P.C. and the medical papers in the case diary prima facie make out the commission of a cognizable offence in respect of the complainant and other police personnel by the petitioners/accused persons.

From the materials on record including the case diary and submission of both sides, it is seen that the seizure list shows the seizure of :-

1. Two boxes of chocolate bombs containing 24 pieces in one box and
2. 10 packets of kalipatka each containing 14 pieces.
3. The seizure was made from the place of occurrence thus prima facie supporting the prosecution case.

Here police themselves have faced the assault when on duty to maintain law and order.

Too often, the hard and dangerous work that our police officers do go unnoticed or at least unrecognized. Most people don't really think about what police do every day in their community until they need assistance from them. There are a lot of reasons to thank the local police department, and here are just a few of them:-

(a) Uncertain and dangerous work and duty. Every day police officers leave the station in order to protect us from any dangerous elements in our community. They put themselves in dangerous situations that could end with them being hurt or even killed—all in the name of public safety. That's not a job that many people would be willing to do, and it's sad that many of us ignore the good that police do on a daily basis, while continuously finding fault in them, their service and their departments, when we ourselves are far from perfect. A person has good and bad qualities put together, it is when the balance tilts on the side of bad that action needs to be taken so till then the good must be acknowledged and respected in all including the persons in uniform.

(b) They continuously face the bad, so that we can be safe sometimes even from ourselves (when we act against our own interest, example - rash driving, attempt to commit suicide). Police officers deal with troubled people in our society all the time. That's not easy physically or mentally, but done in course of their duty and to earn their bread and butter, which we all yearn to do. We feel safe seeing the police around, though exceptions (very rare) are there in all streams. Their work is exhausting physically, mentally and emotionally and they are not compensated in proportion to the work done not even in the facilities extended.

The uniform gives the public confidence though they being human too, may react emotionally. If you treat them with respect, they will reciprocate. Officers take a lot of abuse from people who don't know them and simply don't like the police. Showing a little respect will go a long way.

But having power given by the statute there may be misuse, which the people

rightly react to, at times.

It's easy to forget all the hard work and sacrifices police officers make on a daily basis. Everyone loves acknowledgement and appreciation, the Police are no different. Their work deserves appreciation and acknowledgement so that they are inspired to do more service effectively.

In the present case the noise and fire was sought to be stopped not only for the residents but also as there was danger of loss of life and property in case of an accident by fire which the petitioners may not foresee.

Obstructing an officer while on duty is an offence not to be taken lightly and is to be proved by way of adducing evidence during trial. And as the ingredients of the offences alleged are prima facie present making out the commission of cognizable offences against the petitioners, the proceedings in this case should not be quashed in the interest of justice.

Quashing a proceeding of such a nature where there is prima facie material, will be an abuse of process of law/court and will also give a very wrong message to the society as here in this case it is the protectors (in law) seeking justice.

The views of the Supreme Court in *Commission of Police vs. Raj Kumar* on 25 August, 2021, is very relevant in this case.

"14. This Court has, in the past, on several occasions, dealt with questions which are similar, if not entirely identical to what is involved in the present case, to wit, whether in the event of exoneration or acquittal of an applicant/candidate arrayed as accused of various offences is a decisive factor for consideration of his or her suitability. Several judgments in the past had appeared to draw a distinction between "clean" acquittal of accused individuals on the one hand and those acquitted or exonerated on account of benefit of doubt. Similarly, where candidates were charged with grave offences involving moral turpitude as well as larger outcomes were examined. Another area which engaged this Court's attention was the effect of non-disclosure of pending criminal cases. Matters came to a head when all these issues were referred to authoritative decision by a larger three judge Bench. In *Avtar Singh* (supra), the three-judge bench, after detailed discussion of the various circumstances that arose when public authorities are called upon to deal with such cases, recorded its conclusions in the following manner:

"38. We have noticed various decisions and tried to explain and reconcile them as far as possible. In view of aforesaid discussion, we summarize our conclusion thus:

38.1 Information given to the employer by a candidate as to conviction, acquittal or arrest, or pendency of a criminal case, whether before or after entering into service must be true and there should be no suppression or false mention of required information.

38.2 While passing order of termination of services or cancellation of candidature for giving false information, the employer may take notice of special circumstances of the case, if any, while giving such information.”

15. There are subsequent judgments too in this regard which have followed the ruling in *Joginder Singh v. Union Territory of Chandigarh & Ors*, (2015) 2 SCC 37 ; *Union Territory, Chandigarh Administration & Ors v. Pradeep Kumar & Anr.*, (2018) 1 SCC 797 and *Anil Bhardwaj v. High Court of Madhya Pradesh*, (2020) SCC Online (SC) 832 . Before proceeding to analyze the facts in each appeal, it would also be useful to reproduce the relevant extract of this Court’s ruling in *Mehr Singh* (supra) where it was held as follows:

“The police force is a disciplined force. It shoulders the great responsibility of maintaining law and order and public order in the society. People repose great faith and confidence in it. It must be worthy of that confidence. A candidate wishing to join the police force must be a person of utmost rectitude. He must have impeccable character and integrity. A person having criminal antecedents will not fit in this category. Even if he is acquitted or discharged in the criminal case, that acquittal or discharge order will have to be examined to see whether he has been completely exonerated in the case because even a possibility of his taking to the life of crimes poses a threat to the discipline of the police force. The Standing Order, therefore, has entrusted the task of taking decisions in these matters to the Screening Committee. The decision of the Screening Committee must be taken as final unless it is mala fide. In recent times, the image of the police force is tarnished. Instances of police personnel behaving in a wayward manner by misusing power are in public domain and are a matter of concern. The reputation of the police force has taken a beating. In such a situation, we would not like to dilute the importance and efficacy of a mechanism like the Screening Committee created by the Delhi Police to ensure that persons who are likely to erode its credibility do not enter the police force. At the same time, the Screening Committee must be alive to the importance of trust reposed in it and must treat all candidates with even hand.”

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30. The High Court’s approach, evident from its observations about the youth and age of the candidates, appears to hint at the general acceptability of behaviour which involves petty crime or misdemeanour. The impugned order indicates a broad view, that such misdemeanour should not be taken seriously, given the age of the youth and the rural setting. This court is of opinion that such generalizations, leading to condonation of the offender’s conduct, should not

enter the judicial verdict and should be avoided. Certain types of offences, like molestation of women, or trespass and beating up, assault, causing hurt or grievous hurt, (with or without use of weapons), of victims, in rural settings, can also be indicative of caste or hierarchy-based behaviour. Each case is to be scrutinized by the concerned public employer, through its designated officials—more so, in the case of recruitment for the police force, who are under a duty to maintain order, and tackle lawlessness, since their ability to inspire public confidence is a bulwark to society's security."

In the instant case, charge-sheet has been filed and cognizance has been taken by the Magistrate concerned; the committal proceedings have not yet taken place; and some of the offences attracted in this case are exclusively triable by the Sessions Court.

The Supreme Court in *State of Maharashtra vs. Salman Salim Khan* (2004) 1 SCC-525, held:-

"12.....In a case praying for quashing of the charge, the principle to be adopted by the High Court should be that if the entire evidence produced by the prosecution is to be believed, would it constitute an offence or not. The truthfulness, the sufficiency and acceptability of the material produced at the time of framing of charge can be done only at the stage of trial....."

At present the only material before this Court is the charge sheet included in the case diary and at this stage, it is premature to come to a clear finding. The materials in the case diary and the charge sheet there in makes out a cognizable offence against the accused/petitioner and there is sufficient materials for proceeding against the accused/petitioner towards trial and the inherent power of the court should not be exercised to stifle a legitimate prosecution (in the words of the Supreme Court).

The Charge Sheet and the evidence placed in support thereof, form the base to take or refuse to take cognizance by the competent court.

Applications against charge sheet and considering the matter on merit in the guise of prima facie evidence to stand an accused for trial, amounts to pre trial of Criminal trial. (*State of Bihar Vs P.P. Sharma*, AIR 1991 SC 1260).

The ultimate test therefore, is whether the allegations have any substance (*Prakash Singh Badal Vs State of Punjab*, AIR 2007 SC 1274).

In the Present case there is substance in the allegations and material exists to prima facie make out the complicity of the applicant in a cognizable offence, which is triable by a court of sessions and as such the proceedings in this case should not be quashed and this is a fit case where the inherent powers of the Court should not be exercised.

Accordingly, the criminal revisional application being CRR 534 of 2019 stands dismissed.

There will be no order as to costs.

All connected Application stand disposed of.

Interim order if any stands vacated.

Let a copy of this judgment be sent to the learned Trial Court forthwith for necessary compliance.

Urgent Photostat Certified copy of this Judgment, if applied for, be supplied expeditiously after complying with all necessary legal formalities.