

(2022) 11 CAL CK 0099

Calcutta High Court (Appellate Side)

Case No: Criminal Revision No. 2105 Of 2017

Narayan Pradhan &
Anr.

APPELLANT

Vs

State Of West Bengal

RESPONDENT

Date of Decision: Nov. 29, 2022

Acts Referred:

- Indian Penal Code, 1860 - Section 171F
- Code Of Criminal Procedure, 1973 - Section 155, 155(2), 155(3), 251, 258, 482
- West Bengal Municipality Act, 1993 - Section 121

Hon'ble Judges: Subhendu Samanta, J

Bench: Single Bench

Advocate: Nabankur Paul, Md. Apzal Ansari, Madhusudan Sur, Imran Ali, Manaranjan Mahata, Pratick Bose

Final Decision: Allowed

Judgement

Subhendu Samanta, J

This is an application under Section 482 of the Code of Criminal Procedure for quashing of the proceedings being N.G.R No.300 of 2011 arising out of

Sadar Police Station G.D.E. No.583 dated 11.4.2011 under Section 171F of the Indian Penal Code and Section 121 of the West Bengal Municipality

Act, 1993 pending before the Court of Learned Judicial Magistrate at Darjeeling and also against all consequent orders passed by the Learned

Magistrate below on 16.9.2016 and affirmed by the Learned Additional Sessions Judge dated 28.4.2017.

The brief fact of the case is that one written information dated April 9, 2011 was lodged with the Inspector-in-Charge Sadar Police Station, Darjeeling

by the then Returning Officer, 23-Darjeeling A/C & Sub-Divisional Officer, Darjeeling Sadar contending inter alia that he had issued notice to the

candidate, GJMM, 23-Darjeeling A/C and President/Secretary, GJMM Town Committee, Darjeeling on 6.4.2011 regarding the removal of defacement

at Mall Road(Chowrasta). But they did not remove the defacement and the same has been removed by the MCC Squad on 8.4.2011. On the basis of

such information, he requested the I.C. to take necessary action as per law. On receipt of the said information the I.C. Sadar Darjeeling registered the

same as Sadar Police Station G.D.E. No.583 dated 11.4.2011 corresponding to NGR No. 300 of 2011 for commission of offence punishable under

Section 171F IPC and Section 121 West Bengal Municipality Act, 1993 and endorsed the same to P.S.I Shri D. Sarkar to enquire into the matter.

On completion of the investigation the concerned Investigating Officer submitted a non-FIR prosecution report being No.308/11 dated 13.4.2011 under

Section 171F of the Indian Penal code and Section 121 of the West Bengal Municipality Act, 1993 against the present petitioners.

Learned Chief Judicial Magistrate, Darjeeling on perusal of the prosecution report was pleased to take cognizance of the offence and issued summons

upon the petitioners. On receiving the summons the petitioners appeared before the Court and prayed for bail which was granted. Thereafter, several

dates were fixed for appearance and supply of copies.

The present petitioners, thereafter, preferred an application under Section 258 of the Code of Criminal Procedure for stoppage of the proceeding and

discharging the petitioners from this case.

Learned Magistrate on hearing the application pleased to reject the application on 16.9.2016. The present petitioners challenged the said order before

the Learned Sessions Judge, Darjeeling. Learned Additional Sessions Judge, 3rd Court, Darjeeling affirmed the order of the learned Magistrate and

refused to interfere with it. Hence this instant revisional application.

Learned advocate appearing on behalf of the petitioners submitted before this Court that the investigation of the police on the basis of the information

of the then BDO is grossly illegal. The impugned order passed by the learned court below and the proceeding pending before the learned Magistrate is

also not tenable in the eye of law. The alleged information has no connection with the sections and offences stated in the final report of the police. So

the proceeding before the learned Magistrate cannot be allowed to run. He prayed for quashing of the entire proceeding.

Learned advocate appearing on behalf of the State raised strong objection and submitted before this Court that, after completion of investigation, police

has submitted charge-sheet. The information revealed that the then BDO requested the present petitioners to remove the defacement but they did not

obeyed the same, consequently, MCC squad removed the defacement. The voluntary disobedience of law by the legislatures itself is very glaring in

the instant case, so he prayed for rejection of instant criminal revision.

Heard the learned advocates perused the report for prosecution also perused the information of Returning Officer to the police dated April 9, 2011.

First of all, let me consider the impugned order passed by the Learned Magistrate as well as Learned Sessions Judge in response to an application

under Section 258 of the Code of Criminal Procedure. Section 258 is quoted below:

“258. In any summons-case instituted otherwise than upon complaint, a Magistrate of the first class, or, with the previous sanction of the Chief

Judicial Magistrate, any other Judicial Magistrate, may, for reasons to be recorded by him, stop the proceedings at any stage without pronouncing any

judgment and where such stoppage of proceedings is made after the evidence of the principal witnesses has been recorded, pronounce a judgment of

acquittal, and in any other case, release the accused, and such release shall have the effect of discharge.”

Section 258 is the power of Magistrate to stop proceeding in certain cases. The Section 258 is in respect of summons cases. Summons cases are

generally of two categories: (i) Those, instituted upon complaint and (ii) those, instituted otherwise than upon complaint. The latter category would

include cases based on police reports. Section 258 is intended to cover those cases belonging to one category that is summons cases instituted

otherwise than upon complaint.

The impugned order passed by the learned Magistrate has vividly discussed about the prosecution report and Learned Magistrate of view that the

prosecution report that is the police report being in its nature a complaint. Thus, the Magistrate has no power to stop the proceeding under Section 258

of the Code of Criminal Procedure. Learned Sessions Judge is also on the same view.

I have carefully perused the provisions of law regarding the definition of complaint and other connected provisions wherefrom it appears that the

prosecution report is no doubt a complaint as defined in the code of Criminal Procedure. So, I am considered view the impugned orders passed by the

learned Courtsâ€™ below is justifiable.

Now, I am concentrating about the procedure adopted by the Learned Magistrate in this case. In the order no.1 of the instant N.G.R. case, I.O.

prayed for permission to submit prosecution report under Section 171F of the Indian Penal Code and Section 121 West Bengal Municipality Act, 1993.

His prayer was allowed by the Learned Magistrate.

No doubt, these cases come under the category of summons cases.

Let me considered what is the procedure laid down for investigation of summons cases. Section 155 of the Code of Criminal Procedure enumerated

the provisions as follows:

â€œ155. Information as to non-cognizable cases and investigation of such cases.-(1) When information is given to an officer-in-charge of a police

station of the commission which the limits of such station of a non-cognizable offence, he shall enter to cause to be entered the substance of the

information in a book to be kept by such officer in such form as the State Government may prescribe in this behalf, and refer the informant to the

Magistrate.

(2) No police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for

trial.

(3) Any police officer receiving such order may exercise the same powers in respect of the investigation(except the power to arrest without warrant)

as an officer in charge of a police station may exercise in a cognizable case.

(4) Where a case relates to two or more offences of which at least one is cognizable, the case shall be deemed to be a cognizable case

notwithstanding that the other offences are non-cognizable.â€

The wordings of Section 155 is very clear. Where information was given to the police to the commission of a non-cognizable offence; the police

cannot investigate the non-cognizable case and cannot submit a report with reference to it without the order of the Magistrate. In this case no such

permission was sought for by the I.O. but I.O. has sought for permission to submit the prosecution report. As if, after conduction of investigation I.O.

prayed before the learned Magistrate for submission of a report. This conduct of the I.O. is not permissible in the eye of law. Section 155(2) of the

Code of Criminal Procedure is specific bar. The police shall only investigate the non-cognizable cases and such investigation shall be started with the

order of the Magistrate having jurisdiction. It is abundantly clear in the provisions of Section 155(2) of the Code of Criminal Procedure that the order

of a Magistrate is the condition precedent of initiation of a non-cognizable cases by the police. I have also noticed that by virtue of Section 155(3) of

the Code of Criminal Procedure, the legislature has given ample power to investigate the police officer in respect of non-cognizable cases after

obtaining permission from the jurisdictional Magistrate.

On perusing the report of prosecution in the instant case I noticed the endorsement made there by the I. O. as follows:-

â€œas per endorsement I conduct enquiry with the MCC squad party and found complaint genuineâ€.

This being the version of the prosecution report in question it is crystal clear that before obtaining permission from the Magistrate the I.O. has conducted investigation. This is palpably illegal in the

eye of law. The prior permission of Magistrate to conduct investigation in non-cognizable offences are very much necessary. Such necessary is

witnessed in the instant case also. The Enquiry Officer of the instant case due to his lack of knowledge has prayed for prosecution of the accused

persons/revisionist under Section 121 of the West Bengal Municipal Act, 1993 along with Section 171F of the Indian Penal code. Section 121 of the

West Bengal Municipal Act, 1993 is not a penal Section and further any such activity, as alleged in the contravention of West Bengal Municipal Act,

1993 is not triable by the Court of law.

The ingredients of offence enumerated under Section 171F of the Indian Penal Code is also very much missing in this case. Thus, it is the clear view

of this Court that the prosecution report as submitted by the I.O. is not at all an application of mind of the I.O. and he has submitted the report without

knowledge of the law. The prosecution report itself is baseless and illegal in nature.

It further appears that the procedure enumerated in the Code of Criminal Procedure regarding the trial of summons cases by the Magistrate

specifically in Section 251 was also not at all followed. Honâ€™ble Supreme Court in different judgments has categorically emphasised the value of

Section 251 and its applicability thereof. Failing to comply with such provisions under Section 251 of the Code of Criminal Procedure the proceeding

initiated by the Learned Magistrate is appears to me to justified.

Considering the entire aspect and considering the materials on record, I am of a view that the prosecution report submitted by the I.O. is illegal in the

eye of law. The proceeding to initiate the investigation of non-cognizable cases is also not tenable in the eye of law and the proceeding pending before

the learned Court below is also not running according to law.

Thus, under the above observation, I find if the proceeding is allowed to be continued there shall be a miscarriage of justice. This is a fit case where

this Court can invoke its inherent power enumerated under Section 482 of the Code of Criminal Procedure.

In result thereof, the instant criminal revision being CRR 2105 of 2017 is allowed.

The proceeding pending before the Learned Judicial Magistrate, Darjeeling being N.G.R No.300 of 2011 arising out of Sadar Police Station G.D.E.

No.583 dated 11.4.2011 under Section 171F of the Indian Penal Code and Section 121 of the West Bengal Municipality Act, 1993 is hereby quashed.

Connected pending applications, if any, are disposed of.

Any order of stay passed by this Court during the pendency of the instant revisional application is hereby also vacated.

Let of this order be sent down to the Learned Court for his information and necessary action.

Urgent Photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.