

(1999) 05 CAL CK 0001

Calcutta High Court

Case No: MAT No. 901 of 1999

Ajit Kumar Chakraborty

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision: May 7, 1999

Acts Referred:

- Constitution of India, 1950 - Article 20, 226, 254(2)
- Criminal Procedure Code, 1973 (CrPC) - Section 197, 197(1), 246(4)
- General Clauses Act, 1897 - Section 26
- Penal Code, 1860 (IPC) - Section 161, 403, 409, 420

Hon'ble Judges: S.N. Bhattacharjee, J; S.B. Sinha, J

Bench: Division Bench

Advocate: Sodhan Roy Chowdhury, Dinabandhu Chowdhury and Amol Kr. Saha, for the Appellant; K.D. Mukherjee and S.K. Basu for No. 6, Tarun Roy and Haridas Das, for the Respondent

Final Decision: Dismissed

Judgement

S.B. Sinha, J.

The petitioner who is Chairman of Bankura District Co-operative & Rural Developmental Bank Ltd. (hereinafter referred to as the said Bank) had filed a writ application for quashing a First Information Report which has been dismissed by the learned trial Judge relying upon a decision in R.S. Raghunath Vs. State of Karnataka and another.

2. The basic fact of the matter is not in dispute.

The petitioner had been associated with the said Bank for a long time in one capacity or the other. On the basis of the reports made by the Registrar of the Co-operative Society, the State of West Bengal by an order dated 30-10-98 directed immediate dissolution of the Board of Directors. The validity of the said order was questioned by filing a writ application in this Court which ultimately was allowed by

a division bench of this Court in F. M.A.T. No. 4186 of 1998 by an order dated 25-1-99, inter alia, on the ground that no reason had been assigned therefore by the State as was mandatorily required under Sub-section (2) of Section 30 of the West Bengal Co-operative Societies Act 1983 (hereinafter referred to and called for the sake of brevity as the said Act.) However, pursuant to or in furtherance of the said order dated 30-10-98 the Board of Directors appointed by the State of West Bengal had taken over the management of the said Society. The Executive Chairman of the said Board in addition of his duties, having come to learn of alleged financial irregularities committed by one Anupam Ghatak which was aided and abated by the appellant herein lodged a First Information Report. However, to complete the narration of facts it may be stated that in terms of the leave granted by the division bench of this Court, the State of West Bengal, on the basis of the recommendations made by the Registrar of the Cooperative Societies, had issued another Notification on 12-2-99 whereby and whereunder the Board of Director of the Society was dissolved.

3. Mr. Sadhan Roy Chowdhury, the learned Counsel appearing on behalf of the appellant, inter alia, submitted that the First Information Report dated 12-1-99 would clearly show that the entire allegation has been made against Anupam Ghatak. The learned Counsel submits that therein merely the name of the writ petitioner had been included as a person with whose knowledge, the said alleged financial irregularities have been committed.

4. According to the learned Counsel, even assuming that the writ petitioner-appellant had any hand in commission of the aforementioned penal offence, the same being within the purview of Chapter XVI of the said Act, no cognizance thereof could be taken by the Officer-Incharge concerned inasmuch as in terms of Section 139 of the Act the offence is a non-cognizable one. The learned Counsel further submits that Sub-section (3) of Section 139 of the said Act mandates that no prosecution shall be instituted under the Act without the previous sanction of the Registrar.

5. It was further submitted that only offence which has been made cognizable in term of Sub-section (4) of Section 139 of the Act is punishable u/s 403 of the Indian Penal Code in respect of any moveable property of a Co-operative Society.

6. The learned counsel submits that keeping in view the fact that the respondents have elected to take recourse to the provision of the said Act, the police authorities committed an illegality in registering a case against the petitioner and other u/s 409 and 420 of the Indian Penal Code. In support of the aforementioned contention reliance has been placed on Om Prakash Gupta Vs. State of U.P., and T.S. Baliah Vs. T.S. Rengachari,

7. Mr. Roy, the learned Counsel, appearing on behalf of the State of West Bengal, on the other hand, submitted that bare perusal of the First Information Report would

clearly show that a case u/s 409 has been made out and, thus, it is not for this Court to consider the merit thereof at this stage. Mr. K. D. Mukherjee, the learned counsel for the informant submitted that the Appellant being the Chairman was the person responsible for the affairs of the society.,

8. In support of the said contention, reliance has been placed on [Devi Singh Vs. State of Haryana and Others](#) .

9. It was further submitted that a prosecution u/S. 409 of the Indian Penal Code against an officer of the Co-operative Society is maintainable. Reliance in this connection has been placed on Soumendra Krishna Dev Biswas v. The State reported in 1992 Cri LR 148.

10. Sections 138, 139 and 142 of the West Bengal Co-operative Societies Act which are relevant for the purpose of disposal of the matter read thus :-

S. 138. Offences and penalties.-In-addition to the penalties specified in Sub-section (3) of Section 147, any person mentioned in column 3 and guilty of an offence shown in column 2 of the Fourth Schedule to this Act shall, notwithstanding anything contained elsewhere in this Act or any other law for the time being in force, be liable on conviction to the penalty shown in column 4 of the said Schedule.

Section 139. Cognizance of offence.- (1) No Court inferior to the Court of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence under this Act.

(2) For the purpose of the Code of Criminal Procedure, 1973 (Act 2 of 1974) every offence under this Act shall be deemed to be non-cognizable.

(3) No prosecution shall be instituted under this Act without the previous sanction of the Registrar.

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, an offence punishable u/s 403 of the Indian Penal Code (45 of 1860) in respect of any move-able property of a co-operative society shall be cognizable.

(5) A prosecution under this Act shall be instituted by the Registrar or any person authorised by him in this behalf and all expenses for) a prosecution instituted on the request of a co-operative society shall be borne by or recoverable from such co-operative society."

S. 142. Punishment for corrupt practices. Any officer or employee or member of co-operative society who-

(a) sanctions or receives, as the case may be, any benami loan, or

(b) accepts or obtains or induces to accept or attempts to obtain from any person for himself or for any other person any gratification as a motive or reward as is mentioned in Section 161 of the Indian Penal Code, 1860 (45 of 1860) of

(c) signs the minutes of any meeting of the co-operative society without attending such meeting, or

(d) dishonestly or fraudulently misappropriates, or otherwise converts for his own use any property of the co-operative society entrusted to him or under his control or allows any other person so to do. shall be guilty of corrupt practices and shall be punishable with imprisonment for a term which1 shall not be less than one year but which may extend to two years and shall also be liable to fine: :

Provided that the Court may, for any special reason to be recorded in writing, impose a sentence of imprisonment of less than one year.

11. A bare perusal of the said provisions would clearly show that offences under the Act are only those which have been referred to in the Fourth Schedule appended to the said Act.

12. Under Article 226 of the Constitution of India, a First Information Report as such cannot be quashed. But what can" be quashed by this Court is investigation pursuant to the thereto. The scope and purport of the jurisdiction of this Court in such matter undoubtedly is limited. The Court can exercise its jurisdiction in quashing an investigation by a statutory authority inter alia in a case when it is found that the First Information Report has been lodged mala fide or the same had been lodged contrary to or in contravention of the provisions of any statute.

13. No mala fide has been alleged in this case as against the police authorities or as against the informant. The informant has lodged this First Information Report in his official capacity pursuant to appointment as the Executive Chairman of the Board of Directors in terms of a Government Notification: Although the said Notification has later on been quashed by this Court on technical grounds, it has not been and could not be suggested that the actions on the part of the informant in the meanwhile are void ab initio. Even otherwise, the First Information Report does not become invalid as it is a well settled principle of law that any person can set the criminal law in motion. The question which, therefore, arises for consideration is as to whether Section

Section 139 bars lodging of such First Information Report. The answer to the said question must be rendered in negative.

14. As regard the question of grant of sanction the Apex Court recently in Suresh Kumar Bhikamchand Jain Vs. Pandey Ajay Bhushan and Others, has held (paras 23 and 24): ;

After giving our careful consideration to the facts and circumstances of the case and the respective "submissions of the learned counsel for the parties it appears to us that the question of requirement of sanction u/s 197, Criminal Procedure Code should not be confused with the scheme of trial under the Code of Criminal Procedure and the stage at which an accused against whom the cognizance of

offence has been taken by the learned Magistrate can lead evidence in support of his defence. The question for consideration is when a Magistrate on the basis of a compliant issued process for appearance of the accused on being satisfied that there is sufficient ground for proceeding and the accused appears before the Magistrate and takes the plea that the offence alleged to have been committed by him was in- the discharge of his official duty and further he was not removable from his office save by or with the sanction of the Government and consequently the Court has no power to take cognizance except with the previous sanction of the Government as required under Sub-section (1) of Section 197 of the Code of Criminal Procedure then the Magistrate would be required to decide the plea on the materials on record then existed or the accused can produce relevant material to establish the necessary ingredients for invoking Section 197(1) of the Code? According to Mr. Sibal, the Magistrate can examine the plea only with reference to the materials available on record and at that stage accused cannot have any right to produce any evidence to support his plea. According to the learned Attorney General, if the accused is debarred from producing the relevant materials to indicate that the acts complained of were in fact committed by the accused in discharge of his official duty and he can only produce the materials when the criminal proceeding reaches the stage under Sub-section (4) of Section 246 in any warrant case instituted otherwise than on police report, then the very object and purpose of the provisions of Section 197 will get frustrated and the public servants will have to face irresponsible or vexatious proceedings even in respect of acts done by him in discharge of official duty, According to the learned Attorney General, therefore, though at that stage it may not be permissible for an accused to lead any oral evidence but there cannot be any bar for him to produce necessary documents including official records for the limited purpose of consideration as to whether Section 197 can be said to be attracted and whether there exists a valid sanction.

Referring to K.M. Mathew Vs. State of Kerala and another, the Apex Court observed that if the accused appears before the Magistrate and establishes that the allegations in the complaint petition do not make out any offence for which process has been issued, then the Magistrate will be fully within his powers to drop the proceeding or rescind the process and it is in that connection the Court had observed "if the complaint on the very face of it does not disclose any offence against the accused.

15. An investigation pursuant to a First Information Report can be quashed only when it is found that the allegations made in First Information Report even if given face value and taken to be correct in; its entirety do not disclose any cognizable offence or the investigation is mala fide. See Thomas Augustine v. State of West Bengal reported in 1997 Cri LR 161.

16. A bare perusal of the, First Information Report would clearly go to show that a *prima facie* case has been made out that the petitioner has aided and abetted the

aforementioned Anupam Ghatak. Having regard to the facts and circumstance of this case we, therefore, are of the opinion that no case has been made out for interference with the judgement under appeal.

17. In Pawan Kr. Ruia Vs. S.P.C.B.I. (Economic Offence Wing), a Special Bench of this Court upon taking into consideration a large number of decisions including Union of India and others Vs. B.R. Bajaj and others, has held :-

Here in our case also the F. I. Rs. disclose cognizable offences of very serious nature indicating involvement of the Branch Manager and the petitioner and that being so there is no question of looking into other materials at this stage which the petitioner may wish us to take into consideration nor can we treat the matter as if the matter has come up before us in appeal. In the circumstances we must hold that there is no scope of stopping the investigation and all the investigations must proceed in accordance with law and there is no scope of granting any exemption in favour of the petitioner from the ambit of such investigation.

18. It is now a trite law that the power to quash a criminal proceeding should be exercised sparingly and in rarest of the rare cases. Merit of the allegations made in First Information Report cannot be considered by the High Court while exercising such a power. Reference in this connection may be made to State of Bihar and Another Vs. P.P. Sharma, IAS and Another, and R.S. Raghunath Vs. State of Karnataka and another.

19. In M/s. Jayant Vitamins Ltd. Vs. Chaitanyakumar and another, the Apex Court deprecated interference by the High Court with the police investigation.

20. Yet again in Santosh De and Another Vs. Archna Guha and Others, the Apex Court held that the truth of the allegation should be allowed to be arrived at only after a proper trial.

21. It is true that a complaint petition could have been filed in terms of Section 138 of the said Act as also under the Indian Penal Code. We, however, do not agree with the contention of Mr. Roy Chowdhury to the effect that as by reason of Sub-section (4) of Section

Section 139 only the provision of Section 403 of the Indian Penal Code has been made cognizable, the offences although coming within the purview of the Indian Penal Code would still be non-cognizable. Sub-section (4) of Section

Section 139 provides for a non-obstante clause.

22. Section 403 of the Indian Penal Code is an non-cognizable offence. But in terms of the said " provision, the same has been made a cognizable offence. Thus, a special provision has been enacted in relation to an offence u/s 403 which is also an offence under the said Act and, thus, the maxim "generalia specialibus non derogates" shall apply in this case.

23. Furthermore, the prosecution under Indian Penal Code is permissible despite the fact that the offences might also have been committed under the said Act. Section 26 of the General Clauses Act provides that where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments but shall not be liable to be punished twice for the same offence. The later part of the Section 26 merely protects a person's fundamental right conferred upon him under Article 20 of the Constitution of India.

24. When an offence falls within the purview of one Act or the other the aforementioned maxim is not applicable in view of the clear provision contained in Section 26 of the Act.

25. Section 26 of the General Clauses Act, 1897 was specially enacted with a view to avoid an implied repeal by reason of enactment of Special Acts. A bare perusal of the said provision would clearly show that when the same act falls under two different enactments the offender may be punished under one or the other but not under both.

26. It is also well settled that where the offence falls under two Sections, one requiring sanction and the other not, the prosecution could fall back upon the section not requiring sanction where, in fact, no sanction had been given. It is open to the prosecution to choose its course and there is nothing illegal or unjust if the provision is competent to bring the offence under one provision of the Act or the other.

27. A learned Judge of this Court in Narendra Nath Dey v. State of West Bengal reported in 1997 Cri LR 396 relying upon a Division Bench decision in Soumendra Krishna Deb Biswas v. The State reported in 1992 Cri LR 148 held :-

The learned Counsel for the petitioners submit that the Co-operative Societies Act, is a complete Code in itself and any violation thereof is punishable only under the Co-operative Societies Act and not Indian Penal Code. The learned counsel, have also argued that the Co-operative Societies Act, 1983 has received the assent of President. Hence in view of Article 254(2) of the Constitution, the provisions of Co-operative Societies Act of 1983 shall override the provisions of the Indian Penal Code.

A similar point was raised before a Division Bench of this Court in case of Soumendra Krishna Deb Biswas v. The State 1992 Cri LR 148 and it was held that u/s 26 of the General Clauses Act, 1897, if the offence is punishable under two or more enactments the offender shall be liable to be prosecuted or punished either or any of those enactments but shall not be liable to be punished for the same offence.

It was observed thus :- "It is no doubt true that by Section 142 of the Act of 1983 a lesser and lenient punishment has been provided for the offence of corrupt

practices, but this is not a ground to accept that an officer, employee or member of a co-operative society is not liable to be prosecuted for an act or omission on his part if such act or omission constitutes a punishable offence under the provisions of Indian Penal Code. To bar the application of the provisions of Indian Penal Code in respect of the officer, employee or member of a co-operative society will lead to disastrous consequences and the object of Section 26 of the General Clauses Act will be entirely defeated.

In our view, the offence of corrupt practices, punishable under the Act of 1983 is not identical in essence, import and content with an offence u/s 409 of the Indian Penal Code. The offence of corrupt practices is a new offence created by the Act of 1983 and it does not and cannot repeal by implication or abrogate Section 409 of the Indian Penal Code. In our view, having regard to the principles Laid down by the Supreme Court in the decisions referred to above, there can be no objection to a trial and conviction u/s 409 of the Indian Penal Code even if the accused is an officer, employee or member of the co-operative society and governed by the Act of 1983."

28.- In fact Sub-section (4) of Section

Section 139 clearly postulates the situation that an officer of the Co-operative Society can be prosecuted for criminal misappropriation apart from the offences provided under the Co-operative Societies Act. In our considered view, there does not appear to be any conflict or repugnance.

29. This appeal is, therefore, dismissed. We further make it clear that we have not considered the merit of the allegations made in the First Information Report. In the facts and circumstances of this case there will be no order as to costs.

S.N. Bhattacharjee, J.

30. I agree.