

(2011) 08 CAL CK 0070

Calcutta High Court

Case No: C.R.R. No. 3035 of 2007

Pratap Chandra Roy and Another

APPELLANT

Vs

The State of West Bengal and
Another

RESPONDENT

Date of Decision: Aug. 16, 2011

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 197, 401, 482
- Penal Code, 1860 (IPC) - Section 269, 278, 279, 405, 409

Hon'ble Judges: Syamal Kanti Chakrabarti, J

Bench: Single Bench

Advocate: Milon Mukherjee and Amal Krishna Samanta, for the Appellant; Swapan Kumar Mallick, for the Respondent

Final Decision: Allowed

Judgement

Syamal Kanti Chakrabarti, J.

The present revisional application u/s 401/482 Code of Criminal Procedure has been preferred praying for quashing of the proceeding being G.R. Case No. 478/03 arising out of Durgachak P.S. Case No. 60/03 dated 10.12.2003 under Sections 409/269/278/427 Indian Penal Code including order dated 25.05.2007 passed by the learned Additional District and Sessions Judge, First Court, Tamluk.

2. It is contended on behalf of the Petitioners that both the Petitioners were Medical Technologists (Lab) who have been falsely impleaded in the above case on the basis of a complaint made by one Sajal Mistry, Superintendent, Haldia Sub-Divisional Hospital to the effect that the complainant came to know from some doctors about some foul smell emitting nearby and after careful search came to know from the staff that with the instruction of Dr. Naskar they stacked the condemned bags of blood in the septic tank and this was done twice or thrice within preceding 15 days and further added that about 100 such bags were dumped on Sunday the 7th

December, 2003 under instruction of said Dr. Naskar on 06.12.2003. such disposal of blood and blood bags was done without any approval of authorities and without observing the prescribed norms and procedure causing embarrassment to the health services and environmental pollution of the locality. On the basis of such complaint the aforesaid Durgachak P.S. Case No. 60/03 dated 10.12.2003 was initiated under Sections 409/269/278/427 Indian Penal Code. By filing another complaint the complainant changed the last paragraph of his earlier complaint where he has stated the involvement of Dr. Naskar and other staff and impleaded three persons including Dr. Moinuddin Naskar. On 30.05.2004 the police submitted charge-sheet being No. 16/04 in the form of a final report that No. clue could be detected against the accused persons. On 12.08.2004 the de facto complainant filed an application before the learned erstwhile Sub-Divisional Judicial Magistrate, Haldia informing that he has No. objection to accept the final report. But the state filed another application praying for reinvestigation of the case by CID which was allowed on 12.08.2008 and SP, Purba Medinipore was directed to make further investigation by competent police officer not below the rank of SDPO. On 20th July, 2005 the police submitted charge-sheet after reinvestigation under the aforesaid provision of the Penal Code against the present Petitioners and one Dr. Moinuddin Naskar.

3. From the order dated 29.07.2005 in G.R. case No. 477 of 2003 it appears that on receipt of the said report that as the case is triable by Special Judge, the learned erstwhile SDJM sent the case record along with all connected papers to the Court of learned Special Judge at Tamluk, Purba Medinipore directing sureties to produce the accused before the learned Special Judge.

4. The accused persons then preferred several applications before the learned Special Judge praying for their discharge on grounds of which one plea was taken that the proceeding is void for want of sanction u/s 197 Code of Criminal Procedure which is pre-requisite in the instant case. By order No. 17 dated 25.07.2007 the learned Additional Sessions Judge, First Court, Tamluk dismissed three petitions filed by three accused persons praying for their discharge and also disposed of two other applications filed for early hearing of the said prayer for discharge fixing 07.08.2007 for consideration of charge against the three accused persons.

5. Being aggrieved by and dissatisfied with such order the present two Petitioners namely, Pratap Chandra Roy and Mahima Ranjan Bera have preferred this revisional application.

6. Learned lawyer for the Petitioners has drawn my attention to another order of this Hon'ble Court passed in CRR 3034 of 2007 dated 06.09.2010 whereby one of the accused namely, Dr. Moinuddin Naskar prayed for discharge on the same ground of non-compliance of mandatory provision of Section 197 Code of Criminal Procedure which was allowed by this Hon'ble Court and the said Petitioner was discharged and released from his bail bond. It is further submitted by the learned lawyer for the

Petitioners herein that both of them are on same footing and the investigation of this case resulting in charge-sheet without necessary sanction of the competent authority as required u/s 197 Code of Criminal Procedure is a serious infirmity which vitiates this trial and as such further continuation of both these Petitioners will be an abuse of the process of law which should be prevented by exercising inherent power of this Court.

7. Learned lawyer for the state could not produce before me any such sanction order for prosecution of the present Petitioners who are admittedly public servants.

8. It has been specifically provided in Section 197 Code of Criminal Procedure that No. Court shall take cognizance of any offence committed by an accused who is a public servant while acting or purporting to act in the discharge of his official duty except with the previous sanction of the state government in the instant case.

9. It appears from relevant order-sheets that the IO has tried to obtain previous sanction for prosecution of the Petitioners who were public servant at the material time but the investigation has been completed without obtaining any such sanction. From order dated 03.01.2005 it appears that the learned Court below has observed, *inter alia*, that in his opinion permission u/s 197 Code of Criminal Procedure is essential for causing proper investigation of the case to unearth the guilt of the accused and as such he directed the Director of Health Services, West Bengal, Writers" Buildings, Kolkata - 700 001 to take immediate steps by memo No. 1313(2) DEB dated 06.12.2004 relating to Durgachak PS case No. 60 dated 10.12.2003 under Sections 278/279/427/409 Indian Penal Code. But till date action taken by the Director of Health Services has not been made available. Under the circumstances I hold that completion of the investigation by the IO without obtaining any prior sanction of the state government, before submission of charge-sheet as required u/s 197 Code of Criminal Procedure, is a serious infirmity which makes the entire exercise untenable in law and void *ab initio*. Once charge-sheet has already been submitted without any such prior sanction further continuation of the instant proceeding will, in my opinion, be an abuse of the process of law. Whereas the same view has been taken by this Court in respect of another accused person on 06.09.2010 in CRR 3034 of 2007 I hold that the same benefit should be bestowed upon the present Petitioners since the aforesaid order has not been assailed by the State in higher forum and as such it has reached its finality.

10. Needless to say that the petition of complaint does not also *prima facie* disclose any offence under Sections 409/269/278/427 Indian Penal Code. The action of the present Petitioner in the matter of disposal of condemned bags of blood in nearly septic tank may at best be styled as administrative lapses for which disciplinary proceedings may be initiated but such action cannot be termed as criminal breach of trust by public servant because the Petitioners did not dishonestly misappropriated the same or converted the same to their own use as defined in Section 405 Indian Penal Code. It cannot also be treated as mischief causing any

damage over fifty rupees since there was No. wrongful loss or damage to the public as defined in Section 425 Indian Penal Code. Such act will also not come under the mischief of Section 269 Indian Penal Code because FIR does not disclose that such negligent act is likely to spread infection of disease dangerous to life for keeping the condemned bags of blood in a septic tank. Similarly, such act will also not come under the purview of Section 278 Indian Penal Code since it has not vitiated the atmosphere in any place so as to make it noxious to the health of persons in general dwelling or carrying on business in the neighbourhood or passing along a public way. The said septic tank situated within the compound of Haldia Sub-Divisional Hospital which is meant for neither general dwelling nor neighbourhood of a business place nor a public way as mentioned in Section 278 Indian Penal Code.

11. Therefore, I find sufficient merit in this revisional application which is allowed. Under the circumstances the aforesaid proceeding is hereby quashed and both the accused are discharged and released from their respective bail bonds. Interim order, if any, stands vacated.

12. Let the entire record in connection with the other revisional application being CRR 3034 of 2007 be returned to the concerned department.

13. Urgent certified photocopies of this order, if applied for, be supplied to the parties, on compliance of all requisite formalities.