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Calcutta High Court

Case No: C.R.R. 3489 of 2011

Kajal Maghi	APPELLANT
Vs	
The State of West Bengal and Others	RESPONDENT

Date of Decision: July 18, 2012

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 231(2), 407, 408, 409, 482
- Penal Code, 1860 (IPC) - Section 308, 325

Hon'ble Judges: Dipak Saha Ray, J

Bench: Single Bench

Advocate: Prabir Kr. Mitra, for the Appellant;

Judgement

Dipak Saha Ray, J.
The present case arises out of an application u/s. 482 of the Code of Criminal Procedure, 1973 read with Section 407 of the Code of Criminal Procedure. It is directed against the order dated 16.05.2011 passed by the Ld. District and Sessions Judge, Purba Medinipur in Criminal Misc. Case No. 26 of 2011 arising out of S.T. Case No. 1(9) 2010 corresponding to G.R. Case No. 662 of 2007 u/s. 325/308 of the Indian Penal Code rejecting the prayer of the petitioner/accused person herein for transferring the case from the Court at the Additional Sessions Judge, Fast Tract, 1st Court, Tamluk to any other Court for trial.

2. The relevant facts of the present case are, in a nutshell, as follows :

One Criminal Case bearing Tamluk P.S. case No. 188 of 2007 dated 22.09.2007 u/s. 325/308 of the Indian Penal Code was initiated against the petitioner herein for assaulting one Kalpana Majhi. Police investigated the case and submitted charge-sheet. Thereafter, the said case was transferred to the Court of the Ld. Additional District and Sessions Judge, Fast Track, 1st Court, Purba Medinipur for trial. Subsequently, on 24.11.2010 two

witnesses were present. After examination-in-chief of one of the said witnesses, a petition for an adjournment u/s. 231(2) Cr.P.C was filed for deferring the cross-examination of the said witness till examination of other public witnesses. But the Ld. Court rejected that prayer with some comments and discharged the witness without giving the opportunity to cross-examine the said witness. It is alleged that the said order dated 16.05.2011 thus suffers from inherent impropriety and as such the instant application has been filed for setting aside and/or quashing the said order and for transferring the case from the Ld. Additional Sessions Judge, Fast Track Court, 1st Court, Tamluk to any other Court of the same division.

3. It is submitted by the Ld. Counsel for the petitioner that on account of the observation made in the order dated 24.11.2010 passed by the Ld. Additional Sessions Judge, Fast Track, 1st Court, Purba Medinipur, the accused/petitioner herein apprehended that she would not get justice if the case is not transferred from the said Court to any other Court. It is further contended that the Ld. Sessions Judge had ample jurisdiction to transfer that case under the provisions of Section 408 of the Code of Criminal Procedure.

4. Now, on perusal of the impugned order dated 16.05.2011 with reference to Section 408 and 409 of the Code of Criminal Procedure, it appears that after commencement of trial, the Ld. Sessions Judges have got no jurisdiction to recall any case from the Court of the Additional Sessions Judge.

5. Admittedly, before filing the application u/s. 408 Cr.P.C. charges were framed and evidence in chief of one witness was recorded. So it appears that the Ld. Sessions Judge, Purba Medinipur rightly passed the order rejecting the said application for transfer of the concerned case after withdrawing the same from the Ld. Court concerned.

6. Now, on perusal of the order dated 24.11.2010 passed by the Ld. Additional Sessions Judge, Fast Track, 1st Court, Purba Medinipur, with reference to the petition dated 24.11.l2010 filed on behalf of the accused, it appears that prayers for short pass over were allowed by the Ld. Court on 24.11.2010. Subsequently, at 3-40 p.m. a petition was filed for deferring the cross-examination of P.W. 1 on a new ground which was not raised at the earlier stage.

7. On perusal of the said order dated 24.11.2010 it further appears that the Ld. Trial Court has only given the reasons for rejecting the petition dated 24.11.2010. So the apprehension of the petitioner herein that the Ld. Court framed an opinion in favour of the prosecution which would influence the fate of the trial, is not at all correct.

8. After hearing the Ld. Counsel for the petitioner and taking into consideration all relevant facts and materials, I do not think that the order dated 16.05.2011 which has been sought to be assailed, suffers from any such illegality or impropriety which demands interference by this Court.

9. So the instant application fails.

10. C.R.R. No. 3489 of 2011 is dismissed. There is no order as to the cost.

11. The impugned order dated 16.05.2011 passed by the Ld. Sessions Judge, Purba Medinipur in Criminal Misc. Case No. 26 of 2011 is hereby affirmed. However, in the interest of justice, the present petitioner be given a further opportunity to cross-examine P.W. 1.

12. The order of the Trial Court dated 24.11.2010 as regards payment of cost at Rs. 500/- in favour of the Legal Service authority must also be complied with by 16.08.2012 and on payment of such cost, the Ld. Trial Court may give the accused/petitioner herein further opportunity to crorss-examine P.W. 1.

13. Any further failure on the part of the petitioner herein will perhaps leave the Ld. Court with no option but to proceed with the case by alowing the prosecution to examine other witnesses on that very date after discharging P.W. 1 without cross-examination by the defence.

14. Let a copy of this judgement be sent to the Learned Court for information and necessary action. Urgent photastat certified copy of this judgement be supplied to the parties, if applied for, subject to compliance with necessary formalities.