

(2005) 04 CAL CK 0034

Calcutta High Court

Case No: C.R.R. No. 2293 of 2003

Ashok Roy

APPELLANT

Vs

C.B.I., A.C.B.

RESPONDENT

Date of Decision: April 21, 2005

Acts Referred:

- Constitution of India, 1950 - Article 21
- Criminal Procedure Code, 1973 (CrPC) - Section 156(3), 173, 207, 401, 482
- Penal Code, 1860 (IPC) - Section 120B, 201, 306, 330, 348

Citation: (2006) 1 CHN 225

Hon'ble Judges: Sailendra Prasad Talukdar, J

Bench: Single Bench

Advocate: Sekhar Basu and Debasis Roy, for the Appellant; Ranjan Roy, for the Respondent

Final Decision: Dismissed

Judgement

Sailendra Prasad Talukdar, J.

The present case arises out of an application u/s 401 read with Section 482 of the Criminal Procedure Code.

2. This is directed against order dated 9th July, 2003 passed by the learned Additional Sessions Judge, Fast Track Court No. 2, Purulia, in Sessions Case No. 43 of 2001. The said case arose out of Crime No. RC-04/S/98-CAL dated 20th August, 1998.

3. Grievances of the petitioner may briefly be stated as follows :

The petitioner is an accused in the sessions case as referred to earlier, for his alleged involvement in commission of offences punishable u/s 120B of the Indian Penal Code read with Section 348/330/306/465/471/120B of the Indian Penal Code.

The said case was registered by the respondent being C.B.I., A.C.B., Calcutta, pursuant to an order dated 6.7.1998 passed by the Hon"ble High Court in W.P. No. 3715 of the 1998. In compliance with the said order, the C.B.I, took up investigation of the Barabazar Police Station Case No. 5/98 dated 27.2.1998.

4. The said Barabazar Police Station Case No. 5 of 1998 dated 27.2.1998 was registered for investigation pursuant to an order passed by the learned Chief Judicial Magistrate, Purulia on 20.2.1998 in a petition of complaint filed by one Shyamali Sabar. The allegations made in the said complaint may be capsulated in a few sentences as follows :

Complainant is a poor woman belonging to Sabar @ Kehria Community, a primitive and aboriginal class. She along with her husband used to run the family with great hardship. On 10.2.1998 at about 3/4 p.m. the husband of the complainant namely, Budhan Sabar, was going to Bhangirdih in a cycle with his wife on the carrier. All of a sudden a police constable obstructed their path at Banmndih More. He forcibly took Budhan in a motor cycle and proceeded towards Barabazar. The complainant tried to follow them but with little success. She then got into a bus and reached Barabazar. She went to the police station and found that the Officer-in-Charge and 3/4 other constables were beating her husband mercilessly on various parts of the body. She, as well as her husband, requested police personnel not to beat him up. She was asked to keep quiet. She returned home and narrated the incident to some other persons and requested them to do something for immediate release of her husband. She reported the matter to Sabar Samity the next day. On 13.2.1998 a police jeep with her husband inside reached near her residence. Her husband was asked to find out the stolen articles from the house. As he pleaded innocence and ignorance the police personnel took up the job of searching the house upon themselves. Nothing could be found by them. Officer-in-Charge as well as other police personnel thereafter returned in the jeep of course, with her husband in it. On 14.2.1998 the complainant went to the police station to lodge FIR but it was not accepted. She approached the Sabar Samity. She was advised to send FIR to the Thana as well as to the District Magistrate and the Superintendent of Police. On 15.2.1998 she came to Purulia Jail to meet her husband but she was informed that her husband was not there. She then came to know that her husband was taken into police custody and was physically tortured by such police personnel while in detention. He was produced in Court on 16.2.1998. She herself found that her husband was being assaulted by the accused persons. On 18.2.1998 when she came to meet her husband in jail she was informed that her husband committed suicide in jail on 17.2.1998. She was alleged that such death took place due to severe physical torture upon her husband and, thereafter, the police personnel in order to save themselves cooked up the story of suicide. She also alleged that the O.C., Barabazar Police Station earlier severely assaulted one Indra @ Furi Sabar in police lock-up and the said case was still pending. That matter was, however, enquired into by the West Bengal Human Rights Commission. After conclusion of enquiry it was of the opinion

that some people attached to the jail were responsible for the premature death of Budhu @ Budhan Sabar. But on the basis of the report of investigation vide Charge sheet No. 1 of 2001 dated 19.2.2001 and in response to the summons issued by the learned Sub-Divisional Judicial Magistrate, Purulia, the petitioner appeared in Court and was let out on bail. The case was, thereafter, committed to the Court of Sessions and was then transferred to the learned 2nd Fast Track Court of Additional Sessions Judge, Purulia. At the time of framing of charge, it was submitted that materials on record do not disclose any offence u/s 306 of the Indian Penal Code but learned Judge by order dated 9.7.2003 held that there are sufficient materials to frame charge against the present petitioner and another for committing offences punishable u/s 120B read with section 348/330/306/465/471/201 of the Indian Penal Code. Charges were accordingly framed on 22.9.2003 as against the present petitioner and another person. They however pleaded not guilty to the said charges.

5. The present application has been filed praying for setting aside of the said order dated 9.7.2003 passed by the learned Trial Judge.

6. Heard learned Counsel appearing for the petitioner who submits that the materials on record do not justify framing of charge against the present petitioner.

7. Learned Senior Counsel, Mr. Sekhar Basu, at the very outset drew attention of the Court to the background of the present case. Mr. Bose submitted that an enquiry was held earlier over the death of Budhu Sabar at the behest- of the West Bengal Human Rights Commission. It was submitted that such an enquiry was held long before initiation of the investigation of the present case. Much was said about the significance of such report of enquiry under direction of the West Bengal Human Rights Commission. True, such a Commission has a very important role to play in today's society.

8. Referring to the decision in the case of People's Union for Civil Liberties v. Union of India and Anr. reported in 2005(1) Sup 454, it was submitted on behalf of the petitioner that scheme of the protection of Human Rights Act, 1993 is to protect and implement human rights including those envisaged in Article 21 of the Constitution and International Covenants. The Apex Court held that "the functions include understanding and dissemination of knowledge on human rights."

9. Attention of the Court was invited to the report of enquiry which was held by Sri H. K. Sarkar, I.P.S., Inspector General of Police, West Bengal Human Rights Commission. In the said report it was stated that Budhu Sabar was handled very casually and inhumanly by Purulia Jail authority and he was allowed to remain in cell with a napkin and other belongings etc. as per statement of Head Warder Bipin Behari Patra who put Budhu inside cell No. 2. As per Jail Code Rule No. 747 the bedding of prisoners in cells, except that of prisoners under observation for sickness or insanity, shall be withdrawn from the cell during the day. Here Budhu Sabar used that napkin as a ligature and hanged him to death. If Budhu Sabar was kept in cell

as per Jail Code Rule No. 746 and if the jail staff observed that other rules of Chapter XX relating to the treatment of prisoners in cell, then Budhu Sabar definitely could not commit suicide by hanging inside cell. So it was found that Jailor Shri Kumaresh Ray violated the Jail Code rules and procedure in every sphere arbitrarily in this case and Budhu Sabar became the victim of anarchy of Purulia District Jail administration.

10. In fact the conclusion arrived at by the enquiring authority may be set out here below as follows :

Conclusion : From the above facts and circumstances, it is well-established that Jailor Shri Kumaresh Ray, Head Warder Bipin Behari Patra and Warder Baiju Nath Singh and Jail Doctor Utpal Kr. Mitra are solely responsible for premature death of Budhu Sabar @ Budhan inside the cell. Dr. Utpal Kr. Mitra, Jail Doctor, by making false minute in the minute book of jail about Budhu Sabar abetted the offence. Therefore, all the above-noted jail officer, jail staff and jail doctor are responsible for abetment of suicide of Budhu Sabar @ Budhan inside the cell and they are liable for prosecution u/s 306, IPC.

11. Relying upon all such materials it was argued on behalf of the petitioner that in such backdrop there could be hardly any scope for any fresh investigation by any agency whatsoever. It was then submitted that the CBI while investigating the case did not take into proper consideration such enquiry report and for that matter, learned Trial Court while framing charge against the present petitioner did not close to refer to such report of the Human Rights Commission.

12. Mr. Basu, in course of his argument referred to the importance of the Human Rights Commission and deriving support from the decision as referred to earlier, it was submitted that the "Human Rights" means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by Courts in India. Much was argued in regard to the composition of such Human Rights Commission both at the National level as well as the State level.

13. Mr. Debasis Roy, who subsequently joined Mr. Basu as a Counsel for the petitioner submitted that holding of an enquiry/investigation by the State Human Rights Commission which holds the same power and authority like that of the National Human Rights Commission is not a mere formality and the conclusion arrived at by such Commission must receive the attention of the Government in the administrative sphere and of the Supreme Court as well as of the High Courts in judicial flora. It was further submitted that the object of the protection of Human Rights Act will be frustrated if the findings of such Commission are just brushed aside by the result of investigation made by some other agency. It was then submitted that law does not permit ignoring the report of enquiry held under the direction of the Human Rights Commission.

14. No doubt, the investigation under the protection of Human Rights Act and that under the Criminal Procedure Code were conducted by statutory agencies. It is also a fact that the former leads to submission of a report in the form of recommendation to the Government whereas the latter may end with filing a chargesheet in a Court of Law.

15. Learned Counsel appearing for the petitioner expressed surprise over the fact that the investigation made by the Central Bureau of Investigation did not at all take into consideration the report of enquiry which was held under the direction of West Bengal Human Rights Commission. It also appears that a number of witnesses who were examined by the C.B.I., were also examined earlier. According to Mr. Basu, the learned Trial Judge was not at all justified in ignoring the statements of some of the witnesses examined by the C.B.I., which were made before the enquiring authority under order of the Commission and having regard to the contradictory stand taken by the said witnesses, the learned Judge should not have framed charge against the accused persons.

16. According to learned Counsel appearing for the petitioner judicial propriety and principle of good conscience and equity demand that the order rejecting the petitioner's application for discharge and consequent framing of charge should be aside.

17. In response to this, Mr. Roy, learned Counsel appearing for the opposite party/C.B.I., while summing up the events leading to framing of charge against the petitioner, submitted that filing of the instant application is one more effort on the part of the petitioner to frustrate the process of law.

18. The materials on record clearly reveal that the victim was taken into custody on 10.2.1998 by the present petitioner, who was the Officer-in-Charge of the concerned police station at the relevant time. He was, of course, accompanied by others.

19. Wife of the victim protested and pleaded but it was a cry in the wilderness. Victim was subjected to severe physical torture. On 13.2.1998 he was taken to his house for the so-called search by the police personnel. No recovery of allegedly stolen articles could be made. The victim was subjected to physical torture even at that point of time. Victim's wife went to the police station on 14.2.1998. But her complaint was not recorded. She sent the complaint to District Magistrate and Superintendent of Police as well as to the Officer-in-Charge of the police station by post. On 14.2.1998, he was implicated in a false case. He was produced before the Magistrate on 15.2.1998. On 17.2.1998, he committed suicide while in jail. On the next day, complainant came to know about it. One U/D case was registered. This incident was published in Bengali newspaper on 19.2.1998.

20. On 20.2.1998 a complaint was filed before the Magistrate by the wife of the deceased over such custodial death as a result of torture and maltreatment.

21. Thereafter, a writ petition being W.P, No. 3715 of 1998 was filed on 23.02.1998. The complaint filed before the Magistrate was referred to the police for investigation after treating the said petition as FIR u/s 156(3) of Criminal Procedure Code. The case was registered. Thereafter, on 16.04.1998 a report was drawn up by the Inspector of the West Bengal Human Rights Commission. By order dated 6th July, 1998, the Hon"ble High Court transferred the case to Central Bureau of Investigation for investigation. On 19.02.2001 on the basis of the report submitted, cognizance was taken and, thereafter, in compliance with the statutory provisions u/s 207 of Criminal Procedure Code, copies were supplied.

22. The case was, thereafter committed to the Court of Sessions and then, transferred to the learned Trial Court. On 22nd November, 2003 charges were framed against the accused persons and the schedule for trial was fixed up.

23. It is submitted by Mr. Roy, learned Counsel appearing for the C.B.I., that the present petition challenging the order of framing charges does not have any merit at all. Mr. Roy submitted that the petitioner cannot have any grievance on the score that the report of the West Bengal Human Rights Commission was not taken into consideration by the investigating agency or by the learned Magistrate while taking cognizance. It was contended by Mr. Roy that such report of the Commission is essentially found on the statements and the explanations provided by the accused who have all been named in the police report and whose plea has been recorded while framing of charges u/s 120B read with Section 348/330/306/465/471/120B of the Indian Penal Code.

24. According to Mr. Roy there is no scope for holding that the explanations offered by the accused persons at the time of enquiry by the Commission are more truthful and reliable and there cannot be any question of discharging the accused persons on the basis of such statements reportedly made before the Commission. He further submitted that to allow such things to be taken into consideration at the stage of consideration of charge will amount to permitting an administrative decision of a Commission to brush aside a judicial decision by a Court of competent jurisdiction. He seems to be right in pointing out that such statements before Commission were not tested by any cross-examination nor they were made on oath and the provisions of the Evidence Act were quite naturally not followed.

25. Mr. Roy, thereafter, submitted that at the time of consideration of charge, the Court is not permitted to anticipate any defence and the only thing requiring consideration is whether there is prima facie material, may be something more than mere shadow of doubt so as to implicate the accused persons with the alleged offences. It is not for the learned Court to consider at the stage of framing of charge as to whether there are sufficient, materials so as to establish the guilt of the accused person.

26. In this context learned Counsel appearing for the opposite party/C.B.I., relying upon the decision in the case of [State of Bihar Vs. Ramesh Singh](#), submitted that at the beginning and the initial stage of the trial the truth, veracity and effect of the evidence which the prosecutor proposes to adduce are not to be meticulously judged. No weight can be attached to the probable defence of the accused either.

27. In the case of [Supdt. and Remembrancer of Legal Affairs, West Bengal Vs. Anil Kumar Bhunja and Others](#), it was held that at this stage, even a very strong suspicion founded upon materials before the Magistrate, which leads him to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged, may justify the framing of charges against the accused in respect of the commission of that offence.

28. The Apex Court in the case of [State of Maharashtra, Etc. Etc. Vs. Som Nath Thapa, Etc. Etc.](#), held that at the stage of framing of charge the Court cannot go into the probative value of statement of witness.

29. Mr. Roy relying upon the decision in the case of [State of Maharashtra Vs. Priya Sharan Maharaj and Others](#), submitted that the Court cannot seek independent corroboration at stage of framing of charge.

30. It is the settled principle of law that at the time of framing of charge the Court is required to consider the police report referred to Section 173 of Cr. PC and the documents sent with it. The only right the accused has at that stage is of being heard and nothing beyond that. The Supreme Court in the case of State Anti-Corruption Bureau, Hyderabad and Anr. v. P. Suryaprakasam reported in 1999 SCC 373, held that of course, at that stage the accused may be examined but that is a prerogative of the Court only.

31. Learned Counsel appearing for the O.P./C.B.I. referred to the decision in the case of State of M.P. v. Awadh Kishore Gupta and Ors. reported in 2004 SCC 353, in support of his contention that in exercise of power u/s 482 of the Criminal Procedure Code, this Court cannot act upon the annexures to the petition which cannot be termed as evidence without being tested and proved.

32. Having regard to the various judgments delivered by different High Courts as well as the decisions of the Supreme Court in connection with different cases the legal position that has emerged does not leave any scope for controversy. It is the settled position of law that while exercising jurisdiction u/s 482 of the Code of Criminal Procedure, it is not permissible for the Court to act as if it was a Trial Judge. Even when charge is framed at that stage, the Court has to only prima facie be satisfied about existence of sufficient ground for proceeding against the accused. The Court can certainly evaluate materials and documents on record but cannot appreciate evidence.

33. No doubt, inherent jurisdiction u/s 482 of the Cr. PC is quite wide but must be exercised sparingly and certainly with care and caution. It may be exercised (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of Court, and (iii) to otherwise secure the ends of justice.

34. It may be that the petitioner is well-equipped with the findings in connection with the enquiry held under the order of the West Bengal Human Rights Commission. But the scope of such enquiry is certainly not identical. It cannot be denied that such enquiry was held following a procedure which for reasons mentioned earlier cannot just brush aside the result of investigation made by the Central Bureau of Investigation under the direction given by the High Court in connection with a writ application.

35. The scope and ambit of an application u/s 482 of the Cr. PC cannot be so widened so as to frustrate the process of law.

36. Learned Trial Court while framing charge appears to have taken into consideration all relevant materials which include the materials disclosed in course of investigation. There is no scope for giving weight to the findings of the enquiry held under order of the Human Rights Commission at that stage. This in no way attempts to undermine the role of Human Rights Commission and by no stretch of imagination it can be said that such a Commission is in any way is of less importance. In fact, there is no reason for going into that aspect of the matter within the scope of the present application. It is perhaps sufficient to mention that the Human Rights Commission, both at the National and State level, are of great significance and the directions given by such Commission have far-reaching consequences. In fact, such Commissions can certainly play significant role in meeting the aspirations of the people and finally, in building up a society where the mind is without fear and the head is held high. It can help us to have a future where knowledge is free and the world is not broken up into fragments by narrow domestic walls.

37. Considering all such facts and circumstances and having regard to the discussion as made earlier, I find it difficult to appreciate the grievances, as ventilated by learned Counsel Mr. Basu, appearing on behalf of the petitioner. There is sufficient prima facie material so as to justify framing of charge against the present petitioner. The learned Trial Judge is perfectly justified in framing charges against the present petitioner.

38. Having regard to the nature and gravity of the alleged offences and the right of the accused persons to get speedy justice, learned Trial Court is directed to proceed with the trial of the case on priority basis and, of course, by fixing up consecutive dates for taking of evidence.

39. The present application being C.R.R. No. 2293 of 2003 be dismissed on contest.

40. The Registrar (Administration) may ensure communication of this order to the learned Trial Court forthwith.