

(2009) 05 CAL CK 0042

Calcutta High Court

Case No: C.R.R. No. 993 of 2009

Nani Gopal Das

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision: May 6, 2009

Acts Referred:

- Penal Code, 1860 (IPC) - Section 489A, 489B, 489C

Citation: (2010) CriLJ 1648

Hon'ble Judges: Ashim Kumar Roy, J

Bench: Single Bench

Advocate: Amartya Ghosh and Arnab Mukherjee, for the Appellant; Joy Sengupta, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Ashim Kumar Roy, J.

In this criminal revisional application the petitioner challenged the legality and validity of the charge-sheet relating to the offence punishable under Sections 489A/489B/489C of the Indian Penal Code relates to G. R. Case No. 533 of 1997, now pending before the Learned Additional Chief Judicial Magistrate, Contai, arising out of Digha Police Station Case No. 20 of 1997.

2. Mr. Amartya Ghosh, the learned Counsel appearing on behalf of the petitioner prays for quashing of the case on the following grounds;

(a) It does not appear from the charge-sheet that there was any expert opinion that the seized currency notes in question are counterfeit.

(b) The petitioner is innocent and no materials have been found during investigation that he had any knowledge that those currency notes were counterfeit.

(c) There is no material to show that seized currency notes were recovered from the possession of the petitioner.

(d) No materials to satisfy the requirements of basic ingredients of Section 498A of the Indian Penal Code that either the petitioner was engaged in manufacturing counterfeit notes or in the process of manufacturing.

Lastly, it is submitted that if this Court finds that this is a fit case of quashing, in that case, there may be a direction for expeditious conclusion of the trial and further the warrant of arrest which has been issued against the petitioner be stayed for some time so as to enable him to appear in the Court and to take necessary legal steps in that regard.

3. On the other hand, Mr. Joy Sengupta, the learned Counsel for the State produced the Case Diary and submitted evidentiary materials collected against the petitioner during the course of investigation, *prima facie* establishes that the counterfeit notes in question were seized from the possession of the petitioner and it is he who tendered the notes to the shop-keeper for purchasing of cashew nuts. However, Mr. Sengupta, in his usual fairness submitted that there are no materials to show that the petitioner either engaged in manufacturing of the forged notes or in the process of manufacturing it.

Lastly, Mr. Sengupta submitted that he has no objection, if there is a direction for expeditious conclusion of the trial and if the warrant of arrest is stayed for some time with a direction to the petitioner to surrender in the Court below.

4. I have given my anxious consideration to the respective submissions of the parties and perused the Case Diary.

5. Having gone through the statement of the witnesses, I found that there is specific allegation that when the petitioner tendered two currency notes of denomination of Rs. 100/- each to a shop-keeper for purchasing cashew nuts, it raised doubts in the mind of the shop-keeper as to the genuineness of the same and he was caught there and then with those two currency notes were handed over to the police and the aforesaid case was started. I further find that the seized currency notes were sent to the expert for his opinion and according to such opinion both the seized notes were fake and counterfeit. According to the witnesses, after the petitioner being apprehended with the forged currency notes, he admitted his guilt, therefore, at the present moment on the face of such extra-judicial confession, it cannot be said that the petitioner has no knowledge that those currency notes were forged.

6. In view of above materials on record, it *prima facie* establishes that those two currency notes were recovered from the possession of the present petitioner and at the time, while he was using the same as genuine for purchasing cashew nuts and the said currency notes were subsequently found to be forged and counterfeit and accordingly, it cannot be said that no case punishable u/s 489B of the Indian Penal

Code as well as u/s 489C of the Indian Penal Code has been made out against the present petitioner.

7. So far as the offences punishable u/s 489A is concerned, I found that there is no evidentiary materials collected by the police during investigation that the petitioner was engaged in the process of counterfeit of any currency notes and far less the seized currency notes were counterfeited by him. In such circumstances, no case punishable u/s 489A of the Indian Penal Code is made out. Thus, while the charge-sheet so far that relates to the offences punishable u/s 489A of the Indian Penal Code is quashed, the prayer for quashing of charge-sheet u/s 489B/489C of the Indian Penal Code is declined. This application stands allowed in part.

I find that this case is registered in the year 1997 and thereafter, no trial has been commenced although the copy has been supplied to the petitioner and the case has been already transferred to some other Courts for trial. But because of the absence of the petitioner himself, there was no progress, for which the prosecution cannot be held responsible. I direct the learned Court concerned to conclude the trial of this case as expeditiously as possible preferably within ten months from the date of commencement of recording of evidence.

Lastly, I find that a warrant of arrest has been issued against the present petitioner for his non-appearance in Court, I direct that the operation of the said warrant of arrest shall remain stayed for a period of four weeks. In the meantime, if the petitioner surrenders in Court and prays for bail, his such prayer shall be considered by the Court concerned in accordance with law.

Needless to mention, if the petitioner does not appear in the Court below within four weeks from this date, the order of warrant of arrest shall stand revived and restored and the Learned Magistrate shall have the liberty to proceed against him in accordance with law and to execute the warrant of arrest.

Criminal Section is directed to deliver urgent Photostat certified copy of this Judgment to the parties, if applied for, as early as possible.