

26-04-2023
Subha
Item no. 45
Ct no.34

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction

C.R.R 1547 of 2021

Sital Chakraborty @ Sital Chandra Chakraborty
-versus-
The State of West Bengal & anr.

Re : An application under Section 482 of the Code of Criminal Procedure.

Mr. Kaushik Chaudhury
Ms. Busra Khatun

...for the petitioner.

Mr. Sudip Ghosh
Mr. Bitasok Banerjee

...for the State.

The present revisional application has been preferred challenging the proceedings arising out of Banshihari Police Station Case No. 57 of 2020 dated 01.05.2020 under Sections 505(1)(b)/188 of the Indian Penal Code read with Sections 66/84C of the Information Technology Act, 2002.

The Investigating Agency on conclusion of investigation submitted chargesheet . The allegations made in the FIR were to the effect that one Gopen Sarkar submitted a complaint with the Inspector-in-Charge, Banshihari Police Station alleging that the accused/petitioner by circulating messages was trying to create unrest by inciting the people against the Hon'ble Chief Minister of West Bengal and trying to create a difference between the Hindus and Muslims by circulating wrong statements.

According to the complainant, the accused was trying to

mislead the common people regarding COVID 19 and is creating tension in the society. The complainant felt that by circulation of messages he and his acquaintances are afraid of the future consequences.

The Investigating Agency on conclusion of investigation submitted chargesheet relying upon the evidence of the complainant and other nine witnesses. However, no documents have been relied upon in the chargesheet.

I have perused the case diary. The case diary contains copies of face book screenshot downloads and it reflects that the present petitioner has shared a message which was generated and created by somebody else named as “Pijush’ . There is no certificate of Section 65B available which also at this stage may not be necessary, but having regard to the contents of the said message or write up, it reflects that the contents only relate to an apprehension that people have to organize their own efforts for facing the crisis.

It is further stated that many people who thought that the Chief Minister was a God should now understand as to how she has betrayed the people of West Bengal.

It is also stated therein that corona virus has assumed as a pandemic and even doctors in the hospital have been affected.

I have considered the said post/message, which was not created or generated but only shared by the present petitioner. The same reflects an opinion of an individual but do not create any difference between the Hindus and Muslims or incites any violence in the society.

In Vinod Dua –vs-Union of India & Ors., reported in (2021) AIR

SC 3239 it has been held in paragraphs 43 and 44 which are as follows :-

“43. The principles culled out in paragraph 33 hereinabove from the decision of Court in Kedar Nath Singh(supra) show that a citizen has a right to criticize or comment upon the measures undertaken by the Government and its functionaries, so long as he does not incite people to violence against the Government established by law or with the intention of creating public disorder and that it is only when the words or expressions have pernicious tendency or intention of creating public disorder or disturbance of law and order that Sections 124A and 505 of the IPC must step in.

In our view, the statement by the petitioner as mentioned hereinabove, if read in the light of the principles emanating from the decision in Kedar Nath Singh(supra) and against the backdrop of the circumstances when they were made, can at best be termed as expression of disapprobation of actions of the Government and its functionaries so that prevailing situation could be addressed quickly and efficiently. They were certainly not made with the intent to incite people or showed tendency to create disorder or disturbance of public peace by resort to violence. The petitioner was within the permissible limits laid down in the decision of this Court in Kedar Nath Singh (supra). It may be that certain factual details in the 3rd statement regarding the date when the ban came into effect were not completely correct. However, considering the drift of the entire talk show and all the statements put together it cannot be said that the petitioner crossed the limits set out in the decision of this Court in Kedar Nath Singh (supra).

44. We are, therefore, of the firm view that the prosecution of the petitioner for the offence punishable under Sections 124A and 505(1)(b) of the IPC would be unjust. Those offences, going by the allegations in the FIR and other attending circumstances, are not made out at all and any prosecution in respect thereof would be violative of the rights of the petitioner guaranteed under Article 19(1)(a) of the Constitution”.

Having regard to the manner in which the proceedings were initiated and the contents of the FIR along with the materials collected by the Investigating Agency, I am of the view that further continuance of the proceedings so far as the present petitioner is concerned in respect of Banshihari Police Station Case No. 57 of 2020 dated 01.05.2020 and the chargesheet filed therein would result in miscarriage of justice. Consequently, all further proceedings arising

out of Banshihari Police Station Case No. 57 of 2020 dated 01.05.2020 and the chargesheet filed therein is, hereby, quashed.

With the aforesaid observations, the revisional application being CRR 1547 of 2021 is allowed.

Pending applications, if any, are consequently disposed of.

All concerned parties are to act in terms of a copy of this order duly downloaded from the official website of this court.

[Tirthankar Ghosh, J]