

Criminal Revision

Present:

The Hon'ble Justice Ashim Kumar Roy

Judgment on 20.08.2010

C.R.R. No. 1550 of 2010

**Smt. Usha Rani Mishra (Panda) & Anr.
versus
The State of West Bengal & Anr.**

Points:

Public Servant, Quashing: Person remunerated by the Government on yearly contract basis whether a public servant- A person who is not a public servant whether can be prosecuted on a charge of conspiracy along with the public servant-At the stage of framing charge whether the Court is required to undertake enquiry as to charge can be framed or not- Indian Penal Code S.21 (12), 120-Code of Criminal Procedure,1973 S.482

Facts:

The petitioner no. 1, a Proadhan Sahayika, of a School Barandia Sishu Siksha Kendra, employed on a yearly contract basis. Since there was no permanent education center, all the properties belonging to such Sishu Siksha Kendra were kept in the custody of the petitioner no. 1. She was the person responsible for receiving the salary of herself and other Sahayika from the Government and then to disburse the same. The bank account is also operated jointly by the defacto-complainant and the petitioner no. 1. Sometime in the month of July, 2007 a cheque for Rs. 1,68,800/- was received by the said Sishu Sikkhan Kendra from

the State Government on account of payment of salaries as well as for other expenses. The said cheque was duly deposited and was encashed. One of the Sahayika Shyamali Patra has not received her monthly salary. On enquiry and verification it was found that the petitioner no. 1 dishonestly transferred the entire amount after the same being credited to her account to the account of the petitioner no. 2 for their wrongful gain and she could not give any explanation for the same. The complaint in question was filed in the Court and on the order of the Court made under Section 156 (3) of the Code of Criminal Procedure, a FIR was registered. Petitioners filed application for quashing of the order framing charge under section 408/409 of the Indian Penal Code.

Held:

Admittedly, the present petitioner is remunerated by the Government for teaching the students at Barandia Sishu Sikhana Kendra, she is of course in the pay of Government and performing a public duty. Therefore, is a public servant within the meaning of Clause XII of Section 21 of the Indian Penal Code. Para 9
So far as the question of delay in lodging the FIR that per se cannot be the ground for quashing unless explained. Para 10

It is well settled that at the stage of framing charge the Court is not required to go into the details of the evidentiary materials collected during investigation and to undertake roving and fishing enquiry but is to see whether on the face of the materials gathered during investigation a charge can be framed or not. Furthermore, at this stage upon consideration of the evidentiary materials proposed to be relied upon by the prosecution and upon hearing the parties the

Court is to form an opinion whether there is ground for presuming that the accused has committed an offence. Para 11

Although, the petitioner no. 2 is not a public servant, still he can very well be prosecuted on a charge of conspiracy along with the petitioner no. 2(Petitioner no.1- Sic), with the aid of Section 120B of the Indian Penal Code on the basis of the charge-sheeted materials. Para 12

For Petitioners	:	Mr. Abhijit Banerjee Mr. Manjit Singh Mr. Kapil Chandra Sahoo
For State	:	Mr. Swapan Kumar Mullick
For O.P. No. 2	:	Mr. Soumen Dutta

The Court: In this criminal revision the subject matter of challenge is an order of framing charge under Sections 408/409 of the Indian Penal Code.

2. Heard the Learned Counsels appearing on behalf of the parties. Perused the Lower Court Records as well as the charge-sheeted materials whereupon order impugned has been passed.

3. It has been vehemently urged by the learned advocate of the petitioners' that without disposing of their application under Section 227 of the Code of Criminal Procedure for discharge the Learned Court below mostly illegally and erroneously framed charge against him.

4. Besides the aforesaid submissions it has further been contended as follows;

(a) On the basis of the evidentiary materials collected by the police during investigation no case has been made out.

(b) The petitioner no. 1 is a Head Sahayika of Barandia Sishu Siksha Kendra employed on a yearly contract basis and therefore she is not a public servant within the meaning of Section 21 of the Indian Penal Code as well as the petitioner no. 2 her husband a social worker.

(c) The allegations are absolutely false and on the request of the Secretary of the school, i.e., the defacto-complainant, the opposite party no. 2 herein, the petitioner no. 2 kept the amount in question as Jimmadar and on January 16, 2007 same has been returned to him against proper receipt.

(d) There has been an inordinate delay in lodging the FIR for about seven months.

5. On the other hand, both the Learned Counsels appearing on behalf of the opposite parties vehemently opposed the payer for quashing. The learned advocate appearing on behalf of the defacto-complainant strongly disputed the factum of receipt of the money back. It may be noted during the hearing of the case the original copy of the receipt was produced before this Court when the defacto-complainant who was personally present in Court disputed his signature in the said documents as well as the factum of receipt back of the said amount of money.

6. The Learned Counsel for the State produced the Case Diary and submitted that sufficient evidentiary materials have been collected, as such there cannot be any question of quashing of the charge-sheet.

7. It is true on the application of the petitioners for discharge under Section 227 of the Code of Criminal Procedure no order has been passed. But

the fact remains the Trial Court upon consideration of the charge-sheeted materials was of the opinion that there is ground for presuming the petitioners had committed offence punishable under Sections 408/409 of the Indian Penal code and accordingly framed the impugned charge. Now, merely because no order was passed on the application of the petitioners' for discharge and more particularly when the charge-sheeted materials on the basis of which the charge has been framed as well as the Lower Court Records are before this Court, no useful purpose will be served by remanding the matter back to the Trial Court for consideration of the petitioners' prayer for discharge. On the other hand, I am of the opinion, it would be just and proper for this Court to consider whether the evidentiary materials collected by the police during investigation would justify framing of charge or on the grounds on which the petitioners' sought for discharge would be sufficient to allow their such prayer.

8. It is the case of the prosecution as it appears from the evidentiary materials that the petitioner no. 1 a Prodhana Sahayika of a School Barandia Sishu Siksha Kendra. Since there was no permanent education center, all the properties belonging to such Sishu Siksha Kendra were kept in the custody of the petitioner no. 1. She was the person responsible for receiving the salary of herself and other Sahayika from the Government and then to disburse the same. The bank account is also operated jointly by the defacto-complainant and the petitioner no. 1. Sometime in the month of July, 2007 a cheque for Rs. 1,68,800/- was received by the said Sishu Sikkhan Kendra from the State Government on account of payment of salaries as well as for other expenses. The

said cheque was duly deposited and was encashed. Subsequently, it was found that one of the Sahayika Shyamali Patra has not received her monthly salary. When the petitioner no. 1 was asked about the reason for non-payment of salary to the said Sahayika she assured that shortly the entire amount would be paid to her, but no payment has been made till the lodging of FIR. When on enquiry and verification it was found that the petitioner no. 1 on the self-same day dishonestly transferred the entire amount after the same being credited to her account to the account of the petitioner no. 2 for their wrongful gain and she could not give any explanation for the same. Although the police was informed about the aforesaid incident but police refused to register any case unless the B.D.O. lodged the complaint. Thereafter, B.D.O. was also informed but as no action was taken by the B.D.O. the complaint in question was filed in the Court and on the order of the Court made under Section 156 (3) of the Code of Criminal Procedure, a FIR was registered.

9. The contention that the petitioner no. 1 the head Sahayika who is only employed in her service on a yearly contract basis, therefore does not come within the meaning of public servant as defined under Section 21 of the Indian Penal Code is without any substance. Admittedly, the present petitioner is remunerated by the Government for teaching the students at Barandia Sishu Sikhan Kendra, she is of course in the pay of Government and performing a public duty. Therefore, is a public servant within the meaning of Clause XII of Section 21 of the Indian Penal Code.

10. So far as the question of delay in lodging the FIR that per se cannot be the ground for quashing unless explained. However, in the present case I find that there are prima facie explanation for the delay. The submissions that all the allegations are false and the alleged defalcated amount has been repaid is also a pure question of facts and cannot be gone into at this stage and more particularly when the defacto-complainant who personally present in Court disputed the authenticity of the purported receipt showing repayment and denied that the said amount has been returned. Moreover, even temporary conversion of any property entrusted to an accused for his or her benefit also amount to criminal breach of trust. If at all the money has been refunded back at best same shall be a mitigating circumstance for a Court while after conviction Court is adjudicating on the point of quantum of sentence.

11. It is well settled that at the stage of framing charge the Court is not required to go into the details of the evidentiary materials collected during investigation and to undertake roving and fishing enquiry but is to see whether on the face of the materials gathered during investigation a charge can be framed or not. Furthermore, at this stage upon consideration of the evidentiary materials proposed to be relied upon by the prosecution and upon hearing the parties the Court is to form an opinion whether there is ground for presuming that the accused has committed an offence.

12. In this case, having gone through the evidentiary materials on which the prosecution intent to rely during trial I do not find any fault on the part of the Trial Court. The order of framing charge is supported by sufficient materials.

Although, the petitioner no. 2 is not a public servant, still he can very well be prosecuted on a charge of conspiracy along with the petitioner no. 2, with the aid of Section 120B of the Indian Penal Code on the basis of the charge-sheeted materials.

13. This criminal revision has no merit and accordingly stands dismissed. Interim order, if any, stands vacated.

14. The Learned Court below is directed to commence the trial of petitioners at once. It is further directed the Trial Court must be proceeded strictly in accordance with the provisions of Section 309 of the Code of Criminal Procedure.

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

(Ashim Kumar Roy, J.)