

Criminal Revision
Present: **The Hon'ble Justice Ashim Kumar Roy**

Judgment on: 22.02.2010
C.R.R. No. 31 of 2010
Rongon Neogi
versus
State of West Bengal & Anr.

Point:

Unnecessay observation- Court while disposing of bail application whether can observe that defacto-complainant has evaded tax and opined that the steps against him be taken by the concerned authority –Code of Criminal Procedure, 1973 – S.436

Fact: The petitioner by invoking Section 482 of the Code of Criminal Procedure has prayed for expunging of some disparaging observations made by Ld. Judge, 1st Special Court while disposing of his bail application in a case under the Prevention of Corruption Act,

Held: It is true the findings of the Learned Court was based on some documents filed on behalf of the accused persons before the Court, but the petitioner had no opportunity to have his say as regards to the same. Besides above such observation and direction passed by the Learned Court below cannot be said to be necessary for arriving at a decision as regards to the petitioner's prayer for bail as an integral part thereof. Top of everything there was no sure foundation nor it is desirable that the Learned Court below while disposing of an application for bail on the submissions made on behalf of the accused shall come to a conclusion that the defacto-complainant has evaded tax and opined that the steps against him be taken by the concerned authority. (Paragraph – 4)

Cases cited: The State of Uttar Pradesh Vs. Mohammad Naim, reported in (1964) 2 SCR 363

For Petitioners : Mr. Arup C. Chatterjee
Mr. Malay Dhar
For C.B.I. : Mr. Ranjan Roy

The Court: The petitioner made a complaint in writing to the Superintendent of Police,
Central Bureau of Investigation, Anti Corruption Branch against two officers attached to the S.I.V. Wings, Commissionerate of Service Tax Department, Government of India alleging commission of offences punishable under the

Prevention of Corruption Act, whereupon the R.C. Case No. 20 of 2008 was registered and C.B.I. took up the investigation. The said case gave rise to Special Case No. 1 of 2009. During the investigation of the case C.B.I. arrested both the accused persons and they were produced before the Learned Judge, 1st Special Court, Alipore, South 24-Parganas. On 26th of May, 2008 on behalf of the said accused persons a prayer for bail was made before the Learned Judge, 1st Special Court, Alipore, South 24-Parganas. While disposing of the said bail application the Learned Judge in his order observed as follows;

“Thus, this Court is convinced at least prima facie that this defactocomplainant has evaded service tax, income tax and sales tax which will penalty and interest both for the Central and State Government. Hence, sent the relevant portion of this order to the Commissioner of Income Tax, Commissioner of Commercial Taxes and the Assistant Commissioner, Service Tax S.I.V. Wings, Calcutta by Fax/special messenger for necessary action as the concerned authority may deem fit and proper.”

The petitioner invoking Section 482 of the Code of Criminal Procedure now moved this Court for expunging of such observations.

2. Heard Mr. Arup Ratan Chatterjee, appearing with Mr. Malay Dhar for the petitioner as well as Mr. Ranjan Roy for the C.B.I.

3. In the case of *The State of Uttar Pradesh Vs. Mohammad Naim*, reported in (1964) 2 SCR 363, a four Judges Bench of Hon'ble Supreme Court laid down the test to be followed in considering the expansion of disparaging remarks against a person or authority made by a Court of law in course of a judicial pronouncement and held as follows;

“...It has been judicially recognized that in the matter of making disparaging remarks against persons or authorities whose conduct comes into consideration before courts of law in cases to be decided by them, it is relevant to consider,

(a) whether the party whose conduct is in question is before the court or has an opportunity of explaining or defending himself;

(b) whether there is evidence on record bearing on that conduct justifying the remarks; and

(c) whether it is necessary for the decision of the case, as an integral part thereof, to animadvert on that conduct.

It has also been recognized that judicial pronouncements must be judicial in nature, and should not normally depart from sobriety, moderation and reserve.”

4. Now, having regards to the order in question while the aforesaid observation was made by the Learned Court below in connection with a bail application the petitioner had no opportunity of hearing. Although, it is true the findings of the Learned Court was based on some documents filed on behalf of the accused persons before the Court, but the petitioner had no opportunity to

have his say as regards to the same. Besides above such observation and direction passed by the Learned Court below cannot be said to be necessary for arriving at a decision as regards to the petitioner's prayer for bail as an integral part thereof. Top of everything there was no sure foundation nor it is desirable that the Learned Court below while disposing of an application for bail on the submissions made on behalf of the accused shall come to a conclusion that the defacto-complainant has evaded tax and opined that the steps against him be taken by the concerned authority.

Accordingly, I am of the opinion this is a fit case where the inherent jurisdiction of this Court be exercised and those observations of the Learned Judge referred hereinabove be expunged.

4

This application stands allowed and the observations made by the Learned Judge, 1st Special Court, Alipore, South 24-Parganas in his order dated 26th of May, 2008 in paragraphs 6 and 7 thereof stands expunged.

I, however, make it clear that this order will not preclude the appropriate authority to proceed against the petitioner in accordance with law if there are sufficient materials available against him.

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.*)