

Criminal RevisionPresent: **The Hon'ble Justice Ashim Kumar Roy**

Judgment on: 10.03.2010

C.R.R. No. 430 of 2010**Tapan Das & Anr.****versus****The State of West Bengal****Point:**

QUASHING: In the first Information Report the petitioners were not named as the alleged accused- Petitioners are the son of one Manoranjan Das-The FIR named accused Balai Das is also the son of Manoranjan Das and resident of the same place- The investigation is at very nascent stage- It is yet to be investigated whether the present petitioners are the same persons, viz., Balai Das and his brother- Before conclusion of investigation by the Investigating Agency whether it is proper to quash the F.I.R. - Code of Criminal Procedure, 1973 S. 482.

Fact: Invoking Section 482 of the Code of Criminal Procedure, the petitioners have moved this criminal revision for quashing of the First Information Report under Sections 406/420/302/201/120B of the Indian Penal Code on the ground that they have not named in the First Information Report.

Held:

It is true that in the first Information Report the petitioners were not named as the alleged accused. The petitioners are the son of one Manoranjan Das, of village – Rasulpur, P.O. – Bhandar Khola, Police Station – Gopal Nagar, District – North 24-Parganas. The FIR named accused Balai Das is also the son of Manoranjan Das and resident of the same place. According to the prosecution, the investigation is at very nascent stage and it is yet to be investigated whether the present petitioners are the same persons, viz., Balai Das and his brother. Unless the investigating agency comes to a definite findings that they are not the same persons, the question of quashing of the First

Information Report does not at all arise. It would be just and proper to allow the Investigating Agency to conclude the investigation. (Paragraph – 3)

For Petitioners : Mr. Sankhadeep Chowdhury

For State : Mr. Abhijit Kumar Adhya

The Court: Invoking Section 482 of the Code of Criminal Procedure, the petitioners have moved this criminal revision for quashing of the First Information Report (FIR) relating to the Gopalnagar Police Station Case No. 52/08 dated 4.2.2008 under Sections 406/420/302/201/120B of the Indian Penal Code on the following grounds;

- (a) They have not named in the First Information Report.
- (b) Although there is no allegation against the petitioners, still the police regularly harassing them.
- (c) The petitioners have been granted anticipatory bail by this High Court.
- (d) After granting of anticipatory bail, they have surrendered in the Court below and have enlarged on interim bail and such interim bail has been extended from time to time.

2. Mr. Abhijit Kumar Adhya, the Learned Counsel appearing for the State produced the Case Diary and vehemently opposed the prayer for quashing.

3. I have given my anxious and thoughtful consideration to the submissions made on behalf of the parties and very carefully perused the Case Diary. It is true that in the first Information Report the petitioners were not named as the alleged accused. However, I find both the petitioners are the son of one Manoranjan Das, of village – Rasulpur, P.O. – Bhandar Khola, Police Station – Gopal Nagar, District – North 24-Parganas. I also find the FIR named accused Balai Das is also the son of Manoranjan Das and resident of the same place. According to the

prosecution, the investigation is at very nascent stage and it is yet to be investigated whether the present petitioners are the same persons, viz., Balai Das and his brother. Unless the investigating agency comes to a definite findings that they are not the same persons, the question of quashing of the First Information Report does not at all arise. In my opinion, it would be just and proper to allow the Investigating Agency to conclude the investigation.

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

4. However, this order will not preclude the petitioners to challenge their prosecution if finally found that they are not the same persons against whom the allegation of abducting and killing the victim has been made as well as for the Investigating Agency to file final report if the petitioners are found to be not responsible for the alleged offence. It is submitted by the Learned Counsel of the petitioners that after being enlarged on anticipatory bail, they surrendered in the Court below long back but the Learned Court even after perusing the Case Diary without passing final order as regards to the bail from time to time extending the interim order. If the submission of the Learned Counsel of the petitioners is correct then in that case, I direct the Learned Magistrate to finally dispose of the petitioners' prayer for bail in accordance with law and after considering the Case Diary within four weeks from the date of communication of this order.

6. 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.*)