

**Criminal Revision**

Present:

**The Hon'ble Justice Ashim Kumar Roy**

Judgment on 20.08.2010

***C.R.R. No. 568 of 2008***

***Balaram Mondal & Anr.  
Versus  
The State of West Bengal***

***With***

***C.R.R. No. 1568 of 2010***

***Sastipada Karmakar  
versus  
The State of West Bengal & Anr.***

Points:

**Quashing:** - Delay in lodging F.I.R. whether per se a dent to the prosecution- Accused taken money on the assurance of arrangement of the job and to repay the same within a stipulated period- Failed to comply with the promise-whether the dispute is civil in nature- Mere absence of one or two ingredients of the offence in the F.I.R.-Whether a ground for quashing of the charge sheet- Code of Criminal Procedure, 1973 -S.482

Facts:

Complainant alleged that the accused persons took from him a sum of Rs. 1,20,000/- with the promise to arrange an employment for his son-in-law. Finally, when no job was arranged as assured and the complainant found that the accused persons were gaining time on one pretext or other, he reported the incident to the local police station, but the police took no step against them. He

made the complaint to the Court. The allegations have been corroborated by the other witnesses, who claimed to have been present, at the time when such amount of money was paid to the petitioners. Petitioner filed the revision for quashing the proceeding.

Held:

Since the question is one of quashing the only thing that has to be determined whether on the face of the evidentiary materials collected by the police during investigation and without controverting the correctness of the same, the offences for which charge-sheet has been submitted has been made out or not. Para 3

It is an admitted position that a sum of Rs. 1.20 lakhs was taken by the petitioners from the defacto-complainant, but same has not been returned. Thus, it cannot be said that no offence for which charge-sheet has been submitted has been made out from the evidentiary materials collected by the police during the investigation. Para 4

The contention of the petitioners that the dispute is civil in nature is not at all acceptable, when the case is one of taking money on the assurance of arrangement of the job as well as of taking an accommodation loan with the assurance to repay the same within a stipulated period but not refunded. Para 4

Mere absence of one or two ingredients of the offence literally, in the FIR, is no ground for quashing of the charge-sheet when there are materials to constitute the offence. Moreover, at this stage the alleged contradictions, if any, between the allegations made in the FIR and appearing from the statements of the

witnesses recorded under Section 161 of the Code of Criminal Procedure cannot be gone into. Para 4

-In C.R.R. No. 568 of 2008-

For Petitioner : Mr. Habibur Rahaman

For State : Mr. Barin Roy

-In C.R.R. No. 1568 of 2010-

For Petitioner : Mr. Rabisankar Chatterjee  
Mr. Udaysankar Chatterjee

For State : Mr. Debobrata Roy

The Court:

In connection with Kulti Police Station Case No. 154 of 2007, Balaram Mondal and Bijoy Karmakar, petitioners in C.R.R. No. 568 of 2008 along with Sastipada Karmakar, petitioner in C.R.R. No. 1568 of 2010 were arraigned as accuseds. The said case has now been ended in charge-sheet under Section 420 of the Indian Penal Code against all the three.

Since in both the aforesaid criminal revisions, the petitioners have moved this Court for quashing of the self-same charge-sheet, arising out of Kulti Police Station Case No. 154 of 2007, the same are taken up for hearing together.

2. In C.R.R. No. 568 of 2008, the petitioners have sought for quashing of the case on the following grounds;

(a) The allegations are absolutely false and no amount of money was taken from the defacto-complainant by the petitioners. On the other hand,

the defacto-complainant took a loan from the petitioners and as the petitioners demanded for repayment of the same the aforesaid complaint was lodged falsely.

(b) There has been a delay about 10 years in lodging the FIR.

(c) During investigation police has seized an affidavit from the possession of the defacto-complainant which shows that there was a loan transaction.

(d) The allegations are civil in nature.

Whereas the petitioner in C.R.R. No. 1568 of 2010 made a similar prayer for quashing on the grounds as follows;

(a) There has been a delay of nearly nine years.

(b) In the FIR nothing has been disclosed as to what prevented the complainant in lodging the FIR for throughout that long period.

(c) The stand taken by the complainant in the FIR is contrary to the materials collected during investigation.

(d) There has been no averment about the initial deception or fraudulent intention on the part of the petitioner as regards to the loan transaction.

(e) The aforesaid criminal case manifestly attended with mala fides.

Both the Learned Counsels, appearing for the petitioners, in the aforesaid criminal revisions, in their respective submissions, simply reiterated aforesaid points in support of the prayer for quashing.

On the other hand, the Learned Advocate appearing on behalf of the State produced the Case Diary and vehemently urged that sufficient incriminating materials have been gathered during investigation against the petitioners, and as such the quashing of the charge-sheet does not at all arise.

3. Now, having regards to the grounds on which, the petitioners are praying for quashing of the impugned charge-sheet, I find the same are all pure question of facts and essentially the defence of the accused which cannot be gone into at this stage. Since the question is one of quashing the only thing that has to be determined whether on the face of the evidentiary materials collected by the police during investigation and without controverting the correctness of the same, the offences for which charge-sheet has been submitted has been made out or not.

4. It is the case of the complainant in August, 1998 the accused persons took from him a sum of Rs. 1,20,000/- with the promise to arrange an employment for his son-in-law in Colliery against the land looser quota. Finally, when no job was arranged as assured and the complainant found that the accused persons were gaining time on one pretext or other, he reported the incident to the local police station and the same was recorded vide G.D. Entry No. 44 dated January 2, 1999 but the police took no step against them and then he made the complaint to the Court for upon the police to treat such complaint as FIR and to cause investigation. On the face of the allegations as aforesaid which have been corroborated by the other witnesses, who claimed to have been present, at the time when such amount of money was paid to the petitioners, it

cannot be said no offence has been made out as the law stands the delay in lodging FIR, is not per se a dent to the prosecution case unless the same is explained. In fact the petitioners having alleged that a G.D was lodged to the police in January 1999, it can very well be said that at least the delay has been prima facie explained. It is true the police in course of investigation seized a document which shows that an accommodation loan was taken by the accused persons from the defacto-complainant with an assurance to return the same within three months, if that be so that after taking the loan, the same was not returned and when there was nothing on record to suggest that was a case of mere failure to keep promise, the dishonest intention of the accused can very well be interfered. In either way, it is an admitted position that a sum of Rs. 1.20 lakhs was taken by the petitioners from the defacto-complainant, but same has not been returned. Thus, it cannot be said that no offence for which charge-sheet has been submitted has been made out from the evidentiary materials collected by the police during the investigation. The contention of the petitioners that the dispute is civil in nature is not at all acceptable, when the case is one of taking money on the assurance of arrangement of the job as well as of taking an accommodation loan with the assurance to repay the same within a stipulated period but not refunded. Mere absence of one or two ingredients of the offence literally, in the FIR, is no ground for quashing of the charge-sheet when there are materials to constitute the offence. Moreover, at this stage the alleged contradictions, if any, between the allegations made in the FIR and appearing

from the statements of the witnesses recorded under Section 161 of the Code of Criminal Procedure cannot be gone into.

5. Both the criminal revisions have no merit and accordingly stand dismissed. Interim order, if any, stands vacated.

6. Needless to mention I have not gone into the merits of the case and it will be open to the petitioner to urge those points which are essentially the pure question of facts and their defence during, the trial in accordance with law.

7. The Office is directed to communicate this order to the Learned Court below at once.

8. 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.)*