

Criminal Revisional
PRESENT: The Hon'ble Justice Ashim Kumar Roy
Judgment On : 08-02-2010.
C.R.R. No. 29 of 2010
Sk. Jiaruddin Molla @ Sk. Jiar & Ors.
versus
State & Anr.

Point:

Quashing: Question of quashing whether depends on offence has been made out or not on the evidentiary materials collected by the police during investigation- Code of Criminal Procedure, 1973-S.482.

Fact: Invoking Section 482 of the Code of Criminal Procedure, the petitioners moved this application for quashing of a case relating to the offences punishable under Sections 147/148/149/341/326/328/307/302 of the Indian Penal Code inter alia on the ground that the petitioners are innocent and out of political rivalry, they have been falsely implicated in the case.

Held: When a Court is considering the question of quashing, it is to see whether on the evidentiary materials collected by the police during investigation any offence has been made out or not, at this stage, truth or falsehood of a case cannot be gone into. (Paragraph – 2)

For State : Mr. Swapan Kumar Mullick

The Court:

Invoking Section 482 of the Code of Criminal Procedure, the petitioners moved this application for quashing of a case relating to the offences punishable under Sections 147/148/149/341/326/328/307/302 of the Indian Penal Code which is now pending for trial before the Learned Additional Sessions Judge, Fast Track, 3rd Court, Burdwan being the Sessions Case No. 142 of 2009. It appears from the pleadings in the instant criminal revision that quashing has been sought for on the following grounds;

- (a) The petitioners are innocent and out of political rivalry, they have been falsely implicated in the case.
- (b) The defacto complainant has lodged the F.I.R. out of sheer mala fide.
- (c) There is a counter case against the defacto-complainant.
- (d) The witnesses are the relatives of the defacto complainant.
- (e) There was long standing enmity between the parties.

2. Thus, this case for quashing rests on pure question of facts and those are essentially the matter of defence. When a Court is considering the question of quashing, it is to see whether on the evidentiary materials collected by the police during investigation any offence has been made out or not, at this stage, truth or falsehood of a case cannot be gone into. Which version of the case is true, whether it is of the prosecution or that of the defence, cannot be decided at this stage.

3. Now having gone through the Case Diary produced by Mr. Mullick, I find that the statements of several injured persons were recorded during investigation. All those injured witnesses have named the petitioners as their assailants as well as the assailants of one Siraj Khan who ultimately succumbed to his injuries. It appears from the injury reports that the petitioners names have been disclosed as the assailants before the attending doctor. The complicity of the petitioners in the crime has also transpired from the statements of several other eye-witnesses. Therefore, the question of quashing of the case does not at all arise.

This criminal revision has no merit and accordingly stands dismissed.

4. It has been submitted by Mr. Mullick initially date for framing of charge was fixed on 7.1.2010, but due to the absence of one of the accused persons, no charge could have been framed and next date was fixed on 14.1.2010. He further submitted on that day also no charge could have been framed as the accused was not present in Court. However, Mr. Mullick could not enlighten this Court whether charge has already been framed or not. Be that as it may, if in future no charge could be framed or progress of trial is hauled up due to the absence of any of the accused persons, the learned Court below is directed to take necessary coercive steps in accordance with law to compel their appearance in Court. It is further directed that the Learned Judge shall proceed with the trial of the case strictly in terms of the provision of Section 309 of the Code of Criminal Procedure and shall not grant any adjournment to either of the parties unless he finds the same is necessary for ends of justice.

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.*)