

Criminal Revisional
PRESENT: The Hon'ble Justice Ashim Kumar Roy
Judgment On : 08-02-2010.
C.R.R. No. 75 of 2010
Nirmal Kumar Prosad
versus
State of West Bengal & Anr.

Point:

Quashing: For considering the quashing of a case whether court is to see the allegations made in the F.I.R. and evidentiary materials collected by the police- Code of Criminal Procedure, 1973-S.482

Fact: . Invoking Section 482 of the Code of Criminal Procedure, the petitioner has moved for quashing of an First Information Report relating to offences punishable under Sections 354/323/506 of the Indian Penal Code inter alia on the ground that the investigation has been conducted in a biased way and without any application of mind.

Held: The grounds taken for quashing of the impugned First Information Report are purely question of facts and are the defence of the accused which can only be considered during the trial but not for deciding the question whether the First Information Report can be quashed or not. At this stage Court is to see whether on the allegations made in the First Information Report as well as from the evidentiary materials collected by the police, any offence has been made out or not. (Paragraph – 2)

For State : Mr. Kallol Mondal

The Court:

1. Invoking Section 482 of the Code of Criminal Procedure, the petitioner has moved for quashing of an First Information Report relating to offences punishable under Sections 354/323/506 of the Indian Penal Code. It appears from the pleadings in the instant criminal revision that the grounds for quashing are as follows;

(i) The investigation has been conducted in a biased way and without any application of mind.

(ii) The Investigating Officer has not examined the wife of the accused/petitioner which is against the principle of natural justice.

(iii) There are contradictions between the allegations made in the First Information Report and those made in the forwarding report.

(iv) The allegations are false, concocted and have been made for personal gain.

(v) The police authorities are not fair and reasonable.

2. I have carefully considered the grounds on which the petitioner has sought for quashing of the First Information Report. None of these grounds is tenable for quashing. In fact, the grounds taken for quashing of the impugned First Information Report are purely question of facts and are the defence of the accused which can only be considered during the trial but not for deciding the question whether the First Information Report can be quashed or not. At this stage Court is to see whether on the allegations made in the First Information Report as well as from the evidentiary materials collected by the police, any offence has been made out or not.

4. Mr. Mondal draws the attention of this Court first of all to the First Information Report and then to the statement of witnesses recorded under Section 161 of the Code of Criminal Procedure, namely, the statement of Mahesh Kumar Gupta, Rajesh Gupta and Devanti Devi and submitted that there are sufficient materials to show that there is a prima facie case against the present petitioner. I have also carefully perused those 161 statements and found that there are sufficient materials to constitute the offences alleged. There are specific

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allegations that the accused/petitioner is the husband of the elder sister of the complainant and during the subsistence of such marriage the accused/petitioner again wanted to forcibly marry the complainant his sister-in-law. As she did not agree to his such desire, she was mercilessly assaulted by the accused. The accused then forcibly took her to his house at sweeper colony and molested her. She was also assaulted by the accused/petitioner and as her two brothers, who are polio patients, went to rescue her they were also assaulted by the accused. This criminal revision has no merit and stands dismissed.

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.*)