

CALCUTTA HIGH COURT  
IN THE CIRCUIT BENCH  
AT JALPAIGURI  
CRIMINAL REVISIONAL JURISDICTION  
APPELLATE SIDE

The Hon'ble **JUSTICE SUVRA GHOSH**

CRR 35 of 2019

CRAN 1 of 2019

**Dr. Dilip Kumar Sarkar**  
**- VERSUS -**  
**The State of West Bengal & Anothers.**

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| For the Appellant/Petitioner: | Mr. Sudipta Maitra, Adv.,<br>Mr. Sourav Chatterjee, Adv.,<br>Mr. Soumya Nag, Adv., |
| For the State:                | Mr. Aditi Sankar Chakraborty, Adv.,<br>Mr. Nilay Chakraborty, Adv.                 |
| For the University:           | Mr. Joyjit Choudhury, Adv.,  |

Heard on: 23-04-2019

Date: April 23, 2019

**SUVRA GHOSH, J. :-**

1) In the present application under section 482 of the Code of Criminal Procedure, 1973, the petitioner has prayed for quashing of proceedings

being Special Case No. 2 of 2012 pending before the Learned Judge, Special Court under the Prevention of Corruption Act, Darjeeling, in assailing the order dated 25-02-2019 passed by the said Learned Court.

- 2)** The petitioners case, in a nutshell, is that on the basis of a written complaint lodged by professor Arunabha Basu Majumdar, the then Vice Chancellor, University of North Bengal, lodged against him, Matigara, police station case No. 67 of 2010 dated 30-03-2010 was registered u/s 409 of the Indian Penal Code. Charge sheet was submitted against the petitioner and five others after conclusion of investigation u/s 409/120 (B) of the Penal Code read with Section 13 (1) (c) (d) (ii) (iii) of the Prevention of Corruption Act. A supplementary charge sheet was also filed thereafter. The petitioner filed an application praying for discharge from the case before the Learned Trial Court which was rejected by the Learned Court vide order dated 08-11-2013, and a subsequent application filed by the petitioner before the High Court u/s 397/401 read with Section 482 of the Code praying for quashing the proceedings against him was also dismissed vide order dated 25-07-2017 in CRR No. 434 of 2014 and liberty was granted to the petitioner to take appropriate defence at the proper time. The other four accused persons filed applications praying for their discharge before the Learned Trial Court which was rejected and their prayer for quashing of the proceedings against them was allowed by the High Court.

- 3)** It is further contended that disciplinary proceedings instituted against the petitioner by the University was concluded by a final order dated 16-02-2016 and as a consequence, the petitioner was dismissed from his service as Registrar of the University of North Bengal. The petitioner preferred an appeal against the said order before the Learned Appellate Tribunal constituted in terms of the provisions of Section 34 of the North Bengal University Act, 1981 and vide judgment and order dated 24-02-2018, the Appellate Tribunal allowed the appeal and directed the University to allow the petitioner to resume his duty with immediate effect as the Registrar of the University. The petitioner has accordingly resumed service as Registrar of the University.
- 4)** The petitioner filed an application before the Learned Trial Court praying for his discharge from the case which was rejected by the Learned Trial Court by the impugned order dated 25-02-2019. The petitioner has preferred the present revision challenging the said order.
- 5)** One application being CRAN No. 1 of 2019 has been filed by the petitioner and opposite party No. 2 jointly wherein opposite party No. 2 has supported the contention of the petitioner and has also prayed for quashing the proceedings pending before the Learned Trial Court on the ground that the matter has been amicably settled between the parties and no fruitful purpose shall be served in allowing the proceedings to continue, particularly as the petitioner has been reinstated by opposite

party No. 2 and has been exonerated from the charges brought against him by the University.

- 6)** The petitioner and opposite party No. 2 have jointly prayed for quashing the proceedings pending before the Learned Trial Court. The State, on the other hand, has opposed the applications on the ground that an earlier application filed by the petitioner before the High Court was rejected by the High Court with liberty to the petitioner to take his defence during trial of the case. The case is fixed for consideration of charge and it is open to the petitioner to plead his innocence by resorting to the order passed by the Appellate Tribunal and other material which speak in his favour.
- 7)** It transpires from the material on record that the petitioner who was the Controller of Examinations of the North Bengal University at the relevant time was charged with allegations u/s 409 of the Penal Code by a complaint dated 30-03-2010 lodged by the then Vice Chancellor of the University. Charge sheet as well as supplementary charge sheet have been submitted in the case and the case has been fixed for consideration of charge. The four other co-accused persons of the case have been exonerated and the proceedings against them have been quashed by a co-ordinate bench of this Court. The petitioner prayed for his discharge from the case before the Learned Trial Court which was rejected and a revisional application preferred against the said order was also rejected by a co-ordinate bench of this Court, with liberty to the petitioner to take

appropriate defence at the proper time. A disciplinary proceeding was initiated against the petitioner by the University as per direction of the Supreme Court and the said proceeding culminated in an order dated 16-02-2016, holding the petitioner guilty of the charges levelled against him and dismissing him from service. The petitioner preferred an appeal against the said order before the Appellate Tribunal and the Tribunal allowed the prayer of the petitioner and permitted him to resume his service. The University/ Opposite party No. 2 accepted the decision of the Appellate Tribunal and requested the petitioner to resume his duty by a letter dated 10-03-2018.

**8)** On careful perusal of the findings and order of the Appellate Tribunal, it is evident that the decision taken by the Tribunal is on merits after analyzing and dealing with every allegation made out against the petitioner. At this juncture, reference may be made of the case P.S Rajya v/s State of Bihar reported in (1996) 9 Supreme Court Cases 1 wherein the Supreme Court has held that if the charge could not be established in a departmental proceedings, there is nothing further to proceed against the incumbent in criminal proceedings as the standard of proof required to establish the guilt in a criminal case is far higher than the standard of proof required to establish the guilt in a departmental proceedings.

**9)** It is a fact that an offence u/s 409 of the Penal Code is not compoundable u/s 320 of the Code. Nevertheless, it is the settled law

that section 320 of the Code does not limit or affect the powers of the High Court u/s 482 of the Code. If it is found that the parties have amicably settled the matter between themselves and proceeding with the criminal trial any further shall not serve any fruitful purpose, it is well within the jurisdiction of the Court to quash such proceedings. Further, as the petitioner has been exonerated from the charges levelled against him and have been reinstated in service, continuation of the proceedings will only amount to abuse of the process of law. Exercise of inherent power u/s 482 of the Code can be distinguished from compounding of offence u/s 320 of the Code and in the present case, as continuance of the proceedings shall lead nowhere, justice demands that the proceedings against the petitioner be quashed.

- 10)** Upon consideration of the entire material on record, it is held that the petitioner is entitled to the relief as prayed for.
- 11)** Accordingly, the proceeding being Special Case No. 2 of 2012 pending before the Learned Judge, Special Court under Prevention of Corruption Act, Darjeeling, arising out of Matigara police station case No. 67 of 2010 is quashed.
- 12)** A copy of this order be forwarded to the Learned Trial Court for information and necessary action.
- 13)** The petitioner be released at once and be discharged from his bail bond.
- 14)** CRR 35 of 2019 and CRAN 1 of 2019 are allowed.

- 15)** There will be no order as to costs.
- 16)** Urgent certified photocopies of this judgment, if applied for, be supplied to the parties expeditiously on compliance with the usual formalities.

**(Suvra Ghosh, J.)**