

CRR 589 of 2009

Gobinda Prasad Das
-Vs.-
The State of West Bengal & Anr.

Mr. Somopriyo Chowdhury,
... for the petitioner.

Mr. Narayan Prasad Agarwala,
Mr. Pratik Bose,
... for the State.

Heard Mr. Chowdhury, learned Counsel for the petitioner
and Mr. Pratik Bose, learned Counsel for the State.

This application under Section 482 of the Code of Criminal
Procedure, has been filed by the petitioner over the proceedings
being GR Case No. 742 of 2008 pending before the Learned
Additional Chief Judicial Magistrate, Kakdwip, arising out of
Pathar Protima Police Station Case No. 176 of 2008 dated 23rd
November, 2008 under Sections 406 and 409 of the Indian Penal
Code.

Briefly stated that on 23rd November, 2008, Pradhan of G.
Plot Gram Panchayat, 24 Parganas (South) informed the Officer-
in-Charge of Pathar Protima Police in writing, *inter alia*, that
Gobinda Prasad Das illegally disbursed a sum of Rs. 26,600/- to
persons not entitled under the scheme, depriving the villagers.
Such information since disclosed offence cognizable in nature,
Pathar Protima Police Case No. 176 of 2008 was registered.
Police took up investigation which culminated in the submission
of charge sheet. According to Mr. Chowdhury, learned Counsel
for the petitioner submits that the petitioner has been implicated

in this case falsely after the change of political scenario and this proceeding demonstrates political vendetta. My attention is drawn to the initial report in connection with the allegations disclosed in the FIR which was conducted by the Block Development Officer, Pathar Protima Block and in his report the Block Development Officer observed as follows:-

“From the above enquiry report it is revealed that Sri Gobinda Prasad Das, Executive Assistant, sold China Machine at Rs. 5000/- to Sri Sanjoy Mondal (as per verbal statement of Sri Mondal)

in case of lost of camera, Bicycle, the link of Sri Das is not established.

Sri Das shifted the Inverter to temporary residence without intimating his office.

It is also clear that payment of Rs. 26600/- under Has made to 20 labourers, though the genuineness of labourers is not beyond doubt.

Sri Das used Solar Plates taking verbal instruction of Ex-Pradhan.

There is no documents/evidence found in Gram Panchayat office by which it is proved that Sri Das is guilty in selling China Machine.

The Pradhan made complaint after lodging an FIR and even he did not mention the FIR matte in his complaint.

I am totally in dark regarding FIR till date.”

Drawing my attention to an order passed by a Coordinate Bench of this Court in WP No. 811(W) of 2009, Mr. Chowdhury further submits that the competent authority initiated a departmental proceeding against the petitioner but the same was quashed with liberty to the respondent to initiate fresh

disciplinary proceeding. The order was passed on 30th June, 2009 and since thereafter no step was taken to initiate the proceeding by the department. It is further submitted that the petitioner duly retired from the service on superannuation. It is further contended by Mr. Chowdhury that when the department failed to initiate departmental proceeding afresh, it can be presumed that there was no evidence to substantiate those charges. Standard of proof that is required to establish the charge under the criminal proceeding is far higher with standard of proof required for the establishment of charges in a departmental proceeding. Under such circumstances, the criminal proceeding appears to have been attended with *mala fide*.

Having considered the materials made available on record, I do not find any reason to disagree with the submissions made by Mr. Chowdhury, learned Counsel for the petitioner. Since the proceeding before the Learned Trial Court being GR Case 742 of 2008 is bereft of merit, *prima facie* I am inclined to quash this application.

With this observation, this revisional application is allowed on contest but without any costs.

Let a copy of this judgment be sent down to the learned Court below.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Siddhartha Roy Chowdhury, J.)