

Criminal Revision**PRESENT: The Hon'ble Justice Ashim Kumar Roy****Judgment On: 06-01-2010.****C.R.R. No. 3797 of 2009****Dilip Rana****versus****The State of West Bengal & Ors.****Point:**

QUASHING, CROSS EXAMINATION: Truth or falsehood of the allegations whether can be gone into at the stage of F.I.R - Cross-examination of witnesses by accused during investigation whether permissible- The Code of Criminal Procedure, 1973-S. 482.

Fact: Application under Section 482 of the Code of Criminal Procedure filed by the petitioner for quashing of F.I.R. relating to offense punishable under Section 408 of the Indian Penal Code on the ground that no opportunity was given to him to cross-examine the defacto-complainant to disprove the charge and the same is violation of the principles of natural justice.

Held: It is well settled that an F.I.R. can be quashed only when on the face of the allegations made in the F.I.R., no offense is disclosed. Truth or falsehood of the allegations can not be gone into at the stage of F.I.R.

Paragraph – 3

In a criminal case there is no scope for cross-examination of any witness by the accused during the investigation and the question of cross-examination of witnesses by accused would arise only after the commencement of trial.

Paragraph – 4

For Petitioner : Mr. Chittaranjan Panda

The Court: Invoking Section 482 of the Code of Criminal Procedure, the petitioner has moved the instant criminal revisional application for quashing of a First Information Report relating to

offence punishable under Section 408 of the Indian Penal Code registered at Jagaddal Police Station.

2. Mr. Chittaranjan Panda, the Learned Counsel, appearing in support of this application for quashing vehemently urged that the impugned FIR is liable to be quashed for the following reasons;

(a) The aforesaid FIR was lodged by making false allegations to deprive the petitioner from his legitimate dues.

(b) No such occurrence took place as alleged.

(c) Although, it is alleged the occurrence took place on 1st June, 2009, but complaint was lodged on 3rd June, 2009 in the evening.

(d) Nothing was disclosed in the FIR how many accused persons were collected at the place of occurrence for removal of the motor cycle and other articles from the house of the defacto-complainant.

(e) In fact the petitioner was working at the Nursing Home, viz., Nirupama Seva Sadan of which the defacto-complainant was the proprietor and as he left his job there and joined a new Nursing Home, the aforesaid complaint was lodged against him motivatedly.

(f) The petitioner was actually appointed to work in the operation theatre but in addition to that job he was also forced to work at the laboratory and to collect sample of blood from door to door. When the petitioner repeatedly demanded for increase of his salary but as his demand was not fulfilled he has to leave his job.

(g) The defacto-complainant has not paid his arrear salary and in order to deprive him from his legitimate claim lodged the FIR falsely.

(h) The motor cycle in question is belonging to the petitioner which his father-in-law purchased for him.

(i) The FIR was lodged violating the principles of natural justice and no reasonable opportunity was given to the petitioner to cross-examine the witness on the point of charges made against him.

(j) The FIR is absolutely harrasive and mala fide.

3. I have given my anxious and thoughtful consideration to the submissions made by Mr. Panda, the Learned Counsel of the petitioner. This is a case for quashing of the First Information Report and it is well settled that a FIR can be quashed only when on the face of the allegations made in the FIR no offence is disclosed. Truth or falsehood of the allegations cannot be gone into at this stage. At this stage the question is not whether there was any truth in allegations made but whether on the basis of the allegations a cognizable offence has been made out or not.

4. In this case there is specific allegations made in the FIR that the petitioner has taken away with him various valuable articles belonging to the defacto-complainant worth about Rs. 30,000/-. It was the further allegation that during his employment he was entrusted with the job of looking after the Diagnostic Center of the defacto-complainant and to deal with all monetary affairs but he has left his job without furnishing any accounts and misappropriating nearly Rs. 50,000/-. He had taken away a motor bike which was given to him for the purpose of using the same in connection with the business of the Nursing Home. Now, on the face of the aforesaid allegations it cannot be said that no offence has been made out as against the petitioner. Whether those allegations are true or false and whether such allegations has been made to deny the petitioner, his legitimate dues are all matter of trials and cannot be decided without the recording of evidence. The petitioner might have a plausible defence and that might lead to his acquittal in the trial, but

that cannot be the ground for quashing of a First Information Report. The delay in lodging FIR might touch the credibility of the case of the defacto-complainant unless properly explained during the trial but the same is also no ground for quashing of the FIR.

It was also urged that no opportunity was given to the petitioner to cross-examine the defacto-complainant to disprove the charge that has been brought against him, thus the principle of natural justice has been violated is absolutely without any substance. In a criminal case there is no scope for cross-examination of any witness by the accused during the investigation and the question of cross-examination of witnesses by the accused would arise only after the commencement of the trial. This criminal revisional application is absolutely without any merit and same stands dismissed without cost.

Interim order, if any, stands vacated.

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.)