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August 3,
2021
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C.R.R. No.135 of 2019
With
CRAN 3 of 2019 (Old No.CRAN 3226 of 2019)
(Via Video Conference)

Soumyadip Bhattacharyya
Versus
The State of West Bengal and Anr.

Mr. Kaushik Gupta,
Mr. Arnab Nandi,
Ms. Munmun Gangopadhyay.
...for the petitioner.

Mr. Koustav Bagchi,
Mr. Debayan Ghosh.
...for the opposite party no.2.

Mr. Saswata Gopal Mukherjee,
Mr. Arijit Ganguly,
Mr. Sandip Chakraborty.
...for the State.

The present revisional application has been preferred by the petitioner challenging the proceedings arising out of Maheshtala Police Station Case No.465(6)/2014 dated 10.6.2014 corresponding to B.G.R.2730/2014 under Section 500 read with Section 509 of the Indian Penal Code and under Section 66A of the Information Technology Act, 2000 (as amended up-to-date).

Mr. Gupta, learned advocate appearing for the petitioner submits that the petitioner was arrested on 13th June, 2014 and the charge-sheet was filed before the jurisdictional court on 21st April, 2018 and the petitioner preferred an application for discharge under Section 167(2) of the Code of Criminal Procedure and thereafter the

charge-sheet was submitted. Learned counsel submits that the learned court by keeping the application for discharge pending afforded an opportunity to the investigating agency to submit charge-sheet and the same in fact is against the established principles of law. Learned counsel further submits that the charge-sheet was submitted in a mechanical manner and, as such, Section 66A of the Information Technology Act, 2000 was incorporated in spite of the Hon'ble Supreme Court striking down the provisions in the case of *Shreya Singhal Vs. Union of India* reported at 2015 (2) SCC (Cri) 449/ (2015) 5 SCC 1.

Mr. Chakraborty, learned advocate appearing for the State produces the case diary and draws attention of this Court to the manner in which the investigation has progressed and submits that the electronic device was sent for forensic examination on or about 11th July, 2014 well within the statutory period. However, for want of proper gadgets, the examination could not be conducted and subsequently in March 2018 it was further sent for forensic examination.

Mr. Bagchi, learned advocate appearing for the opposite party No.2 controverts submissions advanced by Mr. Gupta, learned advocate appearing for the petitioner.

In view of the submissions so advanced by the respective parties, let me deal with each point separately. So far as the issue raised by the petitioner in respect of the application under Section 167 of the Code of Criminal Procedure, which was filed on 27th February, 2018 and the learned Magistrate keeping the same

pending issued notice to the investigating agency thereby facilitating the investigating agency to submit the charge-sheet on 21st April, 2018 and thereafter considering the discharge application on 11th June, 2018 is concerned. It is settled principle of law that whenever an application for discharge under the provisions of Section 167(2) of the Code of Criminal Procedure is filed, the learned Magistrate should at the earliest dispose of the same, what would weigh with the learned Magistrate are the materials which were collected till the date the application for discharge has been preferred and the learned Magistrate on consideration of the same would come to a conclusion whether the offences have been made out for taking cognizance or not.

In this case, I have perused the case diary and I find that so far as the oral evidence and other materials are concerned, the same were collected within the statutory period. However, so far as the forensic report is concerned, although the same was sent on 11th July, 2014, but for want of proper gadgets the test could not be effectively conducted by the experts and, as such, subsequently it was sent back and thereafter opinion was sought for from the forensic experts. It has also been settled that for want of scientific experts' opinion, the learned Magistrate would not be prevented from taking cognizance of the offence if on a totality of the circumstances is of the opinion that a prima face case has been made out and there are no laches on the part of the investigating agency in submitting the report under Section 173 of the Code of Criminal Procedure. Although, this Court is not satisfied with the

application under Section 167(2) of the Code of Criminal Procedure being kept pending by the learned Magistrate for more than 3½ months but having regard to the principles set out under Section 167(2) of the Code of Criminal Procedure by the Hon'ble Apex Court, this Court is of the view that the cognizance so taken on the charges in respect of the offences under the Indian Penal Code, are not in consistent with the settled principles of law.

The other part is in relation to the provisions of Section 66A of the Information Technology Act. As the said provision has been struck down by the Hon'ble Supreme Court in the judgment of *Shreya Singhal (supra)*, I am of the view that the cognizance of the said offence under the Information Technology Act taken by the learned Magistrate on 11.6.2018 is against the established principles of law. Accordingly, the further proceedings under Section 66A of the Information Technology Act in connection with the instant case is quashed.

Now, this Court is on the point of consideration of the provisions under Section 500/509 of the Indian Penal Code and the materials which have been collected by the investigating agency in support thereof. As it has been submitted that the provisions of Section 207 of the Code of Criminal Procedure, particularly, the documents on which the prosecution proposes to rely in the instant case are yet to be submitted to the present petitioner, I am of the view that it would be premature to agitate the issue at this stage. The petitioner is granted liberty to agitate his grievance so far as the aforesaid sections are concerned at the stage of consideration of

charge by the learned Magistrate.

Needless to state that the proceedings were initiated in the year 2014, as such the learned Magistrate should fix dates at regular intervals, so that the trial can be taken its logical conclusion within a reasonable period of time.

With the aforesaid observations, CRR 135 of 2019 is disposed of.

Pending application, if any, is consequently disposed of.

Interim order, if any, is hereby vacated.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Tirthankar Ghosh, J.)