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C.R.R. 900 of 2019

In re: (Golam Mostafa & Anr.)

Re: An application under Section 401/482 of the Code of Criminal Procedure, 1973;

Mr. Sekhar Basu, Sr. Advocate

Mr. Asraf Mandal

.... For the Petitioners

Mr. Arijit Ganguly

Mr. Sanjib Kr. Dan

.... For the State

Mr. Habibur Rahaman

....For the Opposite Party No. 2

The subject matter in the present revisional application relates to an order dated 16th February, 2019 passed by the learned Additional Sessions Judge, 3rd Court, Berhampore, Murshidabad in connection with S.Sl. No. 362 of 2018 wherein the application filed by the present petitioners namely Golam Mostafa and Samsul Alam @ Bhulu under Section 227 of the Code of Criminal Procedure was rejected.

Mr. Arijit Ganguly, learned advocate appearing for the State has submitted a report of the concerned officer of Beldanga Police Station, Murshidabad PD which may be kept with the records. Learned Advocate for the State has also produced the case diary.

Mr. Basu, learned senior advocate appearing for the petitioners criticises the order passed by the learned

Additional Sessions Judge which relates to the rejection of the application under Section 227 of the Code of Criminal Procedure on the foundation that the learned Court was impressed by the statements under Section 161 of the Code of Criminal Procedure so far as it related to the wife and sons of the deceased is concerned as also relating to recovery of weapons under Section 27 of the Evidence Act pursuant to the leading statement of one Sipan. According to the learned advocate the contents of the statement of the wife and the sons of the deceased, if accepted in its entirety the same fails to make out any case and not even a remote suspicion can be attached to it.

Mr. Ganguly, learned advocate appearing for the State draws the attention of this Court to the statement of the witnesses both under Section 161 of the Criminal Procedure Code and also under Section 164 of the Code of Criminal Procedure.

Mr. Basu, learned senior advocate appearing for the petitioners has countered the arguments advanced to the extent that the statements were recorded belatedly thereby facilitating the implication of the present petitioners.

I have seen the statements of the witnesses under Section 164 of the Code of Criminal Procedure. I have found

that the witnesses have been named in the charge-sheet as charge-sheeted witnesses. Prima facie, on a bare reading of the statements under Section 164 of the Code of Criminal Procedure, I am of the view that direct evidence is appearing so far as the present petitioners are concerned. Whether the statements were recorded at a belated stage is the subject matter of trial and not a consideration at this stage.

Learned advocate for the private opposite party is also present. He supports the contention of the State and adds that charge has already been framed in the instant case. So far as the foundation of the order passed by the learned trial Court is concerned, the same may not be on a proper appreciation of materials. However, having regard to the materials which have been collected by the investigating agency and relied upon by them for the purpose of trial of the case, I am of the view that there is no scope for interference so far as the order refusing the prayer under Section 227 of the Code of Criminal Procedure is concerned. As charge has already been framed, the petitioners would be at liberty to agitate the points canvassed in the revisional application in course of trial and at the stage of final arguments of the case. As the case was registered in the year 2017 and more than four years have elapsed in the meantime, I direct the learned Sessions Judge to strictly adhere to the provisions of Section

309 of the Code of Criminal Procedure and to take the case to its logical conclusion within a reasonable period of time.

With the aforesaid observations, C.R.R. 900 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.)