

CRR 1558 of 2021
(Via video conference)

In re : An application under Sections 482 of the Code of Criminal Procedure, 1973.

In the matter of : Pabitra Das Adhikary & Anr.

..... Petitioners

Mr. Tapan Datta Gupta
Mr. Parvez AnamFor the Petitioners

Mr. Pratick Bose
Ms. Sukanya Bhattacharyya.....for the State

Mr. Pratick Bose, learned Advocate who usually appears for the State is present in Court. He is requested to appear in this matter. His appointment may be regularised.

This is an application for quashing of the proceedings being G.R.(E) case no. 267 of 2018 arising out Patashpur Police Station case no. 102 of 2018 dated 6.4.2018 under Sections 448/325/376-D/506/34 of the Indian Penal Code, 1860, pending before the learned Additional Chief Judicial Magistrate, Contai, Purba Medinipore.

The learned advocate for the petitioner submits that the FIR, in this case, has been filed belatedly, and order of cognizance taken by the learned Magistrate on January 7, 2019, is bad in law since the same has been done in a mechanical way without any application of mind.

The order dated January 7, 2019, is quoted below:-

“Perused the all relevant documents as well as
C.D. U/s-172 Cr.P.C.
Heard. Considered.
In view of the materials lying in the case record
and CD, I am of the considered opinion that

cognizance of the offence referred in the charge-sheet is required to be taken. Hence, the cognizance is taken in respect of the offences and the case.

Hence issue W/A against all the accd persons.

Copy is ready.

To date (23.03.19) for E/R of W/A.”

The charge sheet in this case, as against the petitioners, was filed on December 27, 2018, under Sections 448/325/376-D/506/34 of the Indian Penal Code.

In this case charge sheet against the petitioners has been filed for commission of offences to be tried by the Sessions Judge upon commitment of the case under Section 209 of the Code of Criminal Procedure, 1973.

After such commitment, the learned Sessions Judge is to take cognizance of the offences in terms of Section 193 of the Code of Criminal Procedure, 1973.

It has been held by a Constitution Bench of Supreme Court in the case reported at **(2014) 3 SCC 306 (Dharam Pal - Vs- State of Haryana)** as follows:-

“**39.** This takes us to the next question as to whether under Section 209, the Magistrate was required to take cognizance of the offence before committing the case to the Court of Session. It is well settled that cognizance of an offence can only be taken once. In the event, a Magistrate takes cognizance of the offence and then commits the case to the Court of Session, the question of taking fresh cognizance of the offence and, thereafter, proceed to issue summons, is not in accordance with law. If cognizance is to be taken of the offence, it could be taken either by the Magistrate or by the Court of Session. The language of Section 193 of the Code very clearly indicates that once the case is committed to the Court of Session by the learned Magistrate, the Court of Session assumes original jurisdiction and all that goes with the assumption of such jurisdiction. The provisions of Section 209 will, therefore, have to be understood as the learned Magistrate playing a passive role in committing the case to the Court of Session on finding from the police report that the case was triable by the Court

of Session. Nor can there be any question of part cognizance being taken by the Magistrate and part cognizance being taken by the learned Sessions Judge.”

In view of the judgment rendered by the Constitution Bench of the Supreme Court in ***Dharam Pal*** case it has to be understood that order dated January 7, 2019, is, in effect, an inconsequential order, and the petitioner cannot rely upon the infirmities in the said order to quash the proceedings.

Belated F.I.R is not a ground for quashing a proceeding when the same has been instituted for commission of offence, *inter alia*, under Section 376D of the Indian Penal Code, 1860.

I find no merit in the application. The revisional application is dismissed.

It has, however, been submitted by the learned advocate for the petitioner that the warrant of arrest has been issued in this case by the learned Chief Judicial Magistrate on 25th March, 2019, and the petitioners are ready and willing to surrender before the learned Magistrate. The warrant of arrest issued against the petitioners shall remain stayed for a period of eight weeks from the date. The petitioners’ prayer for anticipatory bail has been rejected on February 22, 2019 by the learned Sessions Judge, Purba Medinipore. The petitioners shall surrender before the learned Magistrate within eight weeks and the learned Magistrate will consider his application for bail in accordance with law. If the petitioners fail to surrender within the said period of eight weeks, the warrant of arrest issued against the petitioners shall revive and the learned Magistrate will be at liberty to execute the same in accordance with law.

Accordingly, **CRR 1558 of 2021** is dismissed.

All parties are to act on the server copy of this order duly downloaded from the official website of this court.

(Kausik Chanda, J.)