

08.09.2021
Sl. No.36
Court No.34
BM

CRR 1837 of 2019

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IA No.CRAN/1/2019(Old No.CRAN/2723/2019)

Neha (Banka) Kanoria

Vs.

Yashodhan Kanoria & Ors.

Mr. Sabyasachi Banerjee

Mr. Avik Ghatak

Mr. Sagnik Mukherjee ... for the petitioner

Mr. Anuj Singh

Mr. Anirban Datta

Mr. Debabrata Das

Mr. Pradyot Kumar Das

Mr. Reshmi Singhvi ... for the opposite party

Mr. N. P. Agarwal

Ms. Subhasree Patel ... for the State

The present revisional application has been preferred against the order dated 25.01.2019 passed by the learned Additional Sessions Judge, 8th Court, Alipore in connection with Criminal Motion No.431 of 2017.

The genesis of the said order before the learned Sessions Court was search warrant issued by the learned Chief Judicial Magistrate, Alipore on 23.10.2017. The learned Sessions Court vide order dated 25.01.2019 was pleased to allow the revisional application but was pleased to remand the issue before the learned Chief Judicial Magistrate, Alipore, South 24 Parganas for fresh disposal. Be that as it may, the present circumstances changed during the hearing of the revisional application before this Court.

Ms. Patel, learned advocate appearing for the State submitted that there were 75 items enclosed along with the letter of complaint which has been treated to be the First Information Report and within few days of investigation commencing the complainant added certain items.

On 18.08.2021 pursuant to the involvement of the investigating agency and the counsels appearing for both sides certain items had been seized on production. It has been contended that the serial number has been created on individual items and some of the items appearing in the official list which was enclosed along with complaint clubbed many individual items as such serial number may differ from the complaint to that of the seizure list.

It has been submitted by the learned advocate for the State that there are 65 more items to be seized.

Mr. Singh learned advocate appearing for the opposite party opposes such contention and submits that in spite of the case being pending and the accused persons cooperating and the complainant having participated in the proceeding before the foreign court and the assertion made therein there is no requirement for such search warrant to be issued.

Mr. Banerjee, learned advocate appearing for the petitioner submits that there are items which are costly items and which have not been tendered during production on 17th August and 18th August, 2021 before the investigating officer.

Needless to state that if the investigating officer for the sake of investigation prays before a court for executing a search warrant

which is solely required for jurisdictional purpose, the court at the stage of investigation must be in a position to appreciate the compelling circumstances of an investigating agency. As there are allegations under Section 406 of the Indian Penal Code, attempts for recovery are incumbent upon the investigating officer and the power of the Court at that stage is to assess whether the investigating officer is bonafidely wanting to execute the search warrant or malafidely. In this case the investigating agency insist on the search warrant to be executed.

In view of the aforesaid the matter is send back to the learned Magistrate who would pass a fresh direction after considering the items which have already been seized and the items which are further required to be seized according to the prayer made by the investigating officer in connection with the instant case. At this stage no other parties are required to be heard except the Public Prosecutor representing the State.

In view of the aforesaid directions being passed the order passed by the learned Additional Sessions Judge, 8th Court, Alipore on 25.01.2019 in criminal revision No.431 of 2017 is set aside. The investigating officer of the case is directed to make a fresh application along with the list of items required (if any) to be seized for the sake of investigation and explaining the circumstances by 24th September, 2021 which the learned Magistrate would independently consider and decide.

With the aforesaid observations CRR 1837 of 2019 is disposed of.

Pending application, if any, is consequently disposed of.

Interim order, if any, is hereby vacated.

The learned Chief Judicial Magistrate, Alipore is directed to act on the server copy of this order downloaded from the official Website of the Hon'ble High Court at Calcutta.

(Tirthankar Ghosh, J.)