

13th January,
2021
(AK)
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W.P.A 9694 of 2020

Sri Ayan Basu
Vs.
The State of West Bengal & Ors.

Mr. Debasis Kar
Mr. Subhajit Chowdhury
Mr. Husen Mustafi
...For the Petitioner.

Mr. Sk. Md. Galib
...For the State.

The petitioner's grievance is that, on the complaint of the petitioner's wife under various provisions including Section 498A of the Code of Criminal Procedure, a notice was issued under Section 41A of the Criminal Procedure Code on the petitioner.

The petitioner duly approached the Investigating Officer with certain documents, in answer to such notice. However, the documents were not considered while filing the charge sheet, nor copies of those were sent for the purpose of framing charges.

Learned counsel for the petitioner argues that the petitioner was not furnished with any seizure list nor was any statement taken from the petitioner under Section 161 of the Criminal Procedure Code, despite the petitioner having relied on certain documents which were produced before the Investigating Officer.

Learned counsel for the petitioner relies on the judgment reported at *2019 (3) All India Criminal Law Reporter* for the proposition that if an accused files some documents, a statement should be taken from her/him under Section 161 of the Code of Criminal Procedure.

Learned counsel also relies on the judgment of *Shakuntala Vs. Delhi* reported at *2007 (1) DMC 793* and submits that the Investigating Officer cannot withhold evidence which goes in favour of the accused.

Learned counsel appearing for the respondent authorities submits that the investigation has been completed and charge sheet already filed.

There is no scope for “consideration” of the documents of the accused for the purpose of filing charge sheet, since the charge sheet discloses the prosecution case.

That apart, in the event the petitioner has any grievance regarding the charge sheet and the preceding investigation, the petitioner is always at liberty to approach the appropriate Magistrate’s Court for the purpose of seeking further investigation.

By placing reliance on several provisions of the Code of Criminal Procedure, in particular Sections 172 and 173 thereof, learned counsel elaborates the scope of charge sheet and a Case Diary.

By pointing out to the annexures to the writ petition, learned counsel for the State submits that the

documents produced by the accused, that is the petitioner, are part of the Case Diary, as reflected at page-55 of the writ petition.

Since it is open for the petitioner to participate in the framing of charges and to rely on the petitioner's documents, it is submitted that the present writ petition does not lie.

Upon considering the submissions of the parties, at the outset it can be noticed that the apprehension expressed by the petitioner is premature in as much as the petitioner assumes, without basis, that the documents of the petitioner, which were produced before the Investigating Officer, would not be taken into consideration while framing charges.

There is no present reason for such apprehension, since such documents appear to form a part of the Case Diary and would, in any event, be available for consideration by the Magistrate while charges are framed.

Independently of the Case Diary as well, the petitioner can very well approach the appropriate authority for producing the petitioner's documents and to argue on the basis thereof at the stage of framing of charges.

In such view of the matter, there is no scope for interference in the present writ petition, as no palpable mala fides or arbitrariness has been made out by the petitioner in the filing of the charge sheet so far.

Thus, without going into the merits of the petitioner's contention on the alleged offence against him, W.P.A. 9694 of 2020 is disposed of by granting the petitioner liberty to participate in the process of framing of charges and to rely on the petitioner's documents, if any, for the purpose of substantiating his allegations regarding insufficiency of the charge sheet, in accordance with law before the appropriate authority.

There will be no order as to costs.

Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)