

22.01.2021
Item No.2
Ct. No.42
CHC

**C.R.R. No.1696 of 2020
(Physical Hearing)**

In Re: An application under Section 482 of the Code of Criminal Procedure, 1973.

In the matter of:-

Samir Dutta

.....petitioner

Mr. Debasish Roy,
Mr. Dipanjan Chatterjee,
Mr. Kaushik Dey

... for the petitioner

Mr. Saswata Gopal Mukherji, Ld. P.P.
Mr. Swapan Banerjee,
Md. Anwar Hossain

...for the State

This is an application for quashing of proceedings in connection with G.R. Case No.313 of 2011 under Sections 403/ 406/ 409/ 420/ 34 of the Indian Penal Code.

Mr. Roy, learned advocate representing the petitioner submits that in this case accused person has been falsely implicated without any tangible materials being transpired against him.

Admittedly, charge-sheet in this case has already been submitted long before under Sections 403/ 406/ 409/ 420/ 34 of the Indian Penal Code read with offences under Prevention of Corruption Act.

Mr. Mukherji, learned advocate representing State raises objection submitting that when investigation already ended in charge-sheet after undertaking a successful investigation collecting *prima facie* materials against the petitioner, the prayer for quashing at this stage is not entertainable.

It is further contended by Mr. Mukherji that if prayer for proposed quashment is acceded to, there is fair chance of the instant prosecution with outcome of successful investigation to become frustrated.

Attention of the Court is drawn to the order dated 1st April, 2017, passed by the learned court below issuing P/A against the petitioner on the prayer of the Investigating Officer, which was granted. But there is nothing conspicuous that after the prayer for issuance of P/A was allowed, the order was duly complied with issuing necessary process for the purpose adhering to the provisions of the law as incorporated in Section 82 of the Code of Criminal Procedure. Further attention of the Court is drawn to the order dated 26.12.2018 wherefrom it appears that only Warrant of Arrest is pending against the petitioner, but the case was not posted for execution report of P/A.

Mr. Roy, learned advocate for the petitioner submits that petitioner is highly interested to offer himself to the course of law by surrendering subject to passing an order directing stay of operation of the Warrant of Arrest that was pending against petitioner, for a limited period of time.

Mr. Roy, learned advocate for the petitioner further submits that the merits of the case, if there be any, would be agitated before the learned court below at the right point of time collecting the copy of the materials already gathered during course of investigation.

Mr. Mukherji, learned advocate representing the State submits that when there has been no proclamation already issued by issuing necessary process in accordance with the provisions of law, as the lower court record does not conspicuously transpire the same making issuance of process for Proclamation and attachment, the prayer, as proposed by Mr. Roy, needs to be visualized in a manner so that prosecution does not suffer any prejudice in any manner whatsoever.

Having considered the submission of the parties, when the merits of the proposed quashment is not focused by Mr. Roy at this stage, the Court is of the view, that the instant revisional application may be disposed of directing an order staying operation of order, passed by learned court below, issuing Warrant of Arrest against the petitioner, for a period of three weeks from hence, subject to the condition that the petitioner shall surrender before learned court below within the stipulated period of time, and if any bail petition is filed upon surrendering within such stipulated period of time, the same shall be disposed of in accordance with the provisions of the law, providing sufficient opportunity of hearing to either of the parties to this case.

With this direction/observation, the instant revisional application stands disposed of without prejudice to the right and contention of the either of the parties to this case, that may be availed of before appropriate court of law at the appropriate point of time, in accordance with the provisions of the law. The merits of the proposed quashment, is thus unanswered, for the same not being agitated in this case.

All parties shall act in terms of copy of this order downloaded from the official website of this Court.

Urgent Xerox certified copy of this order, if applied for, be supplied to the parties, subject to compliance with all requisite formalities.

(Subhasis Dasgupta, J.)