

16.12.2021
Court No.2
Sl no. 42.
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*CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
APPELLATE JURISDICTION*

C.R.R 105 of 2021

In the matter of : Kamlesh Singh @ Kamalesh Singh
..... petitioner

Mr. Arjun Chowdhury
Ms. Pratusha Dutta
... for the petitioner

Mr. Aditi Shankar Chakraborty
Mr. Aniruddha Biswas
..for the State

The petitioner is one of the accused in GR Case No. 971 of 2020 pending before the learned Additional Chief Judicial Magistrate, Siliguri under Sections 447, 420, 465, 468, 471, 323, 354, 379, 505, 188 and 34 of the Indian Penal Code arising out of Matigara P.S. Case No.236 of 2020.

The petitioner prays for quashing of the said proceedings as also the charge-sheet No.1045 of 2020 dated December 20, 2020 on the ground that the dispute is civil in nature and with regard to right, title and interest over immovable property.

Having considered the nature of allegations, the contents of the First Information Report, the contents of the charge-sheet and the statements of witnesses at the stage of investigation, this Court is of the opinion that this is a fit case to go to trial and the proceedings cannot be quashed. This is not an exceptional and rare case where the extra-ordinary jurisdiction of this Court must be invoked.

The petitioner submits that the charge-sheet should not have been filed without the certification under Section 65B(4) of the Evidence Act, in support of the evidence captured under the CCTV footages.

The learned Advocate for the petitioner submits that this Court on an earlier occasion had granted liberty to the petitioner to pay before the learned Magistrate for collection of the CCTV footages in the possession of the petitioner.

It is submitted by Mr. Arjun Chowdhury, learned Advocate for the petitioner that the police authorities with mala fide intention submitted the CCTV footages along with the charge-sheet but did not take certificate under Section 65B(4) of the Indian Evidence Act. This would result in miscarriage of justice as the evidence of the place of occurrence captured in the electronic device would not be admissible before the learned Court below without proper certification.

Any defect in the investigation can be raised before the learned Magistrate. However, having considered the rival contentions of the parties, this Court is of the opinion that the proceedings and charge-sheet cannot be quashed but the investigating agency is directed to take the certificate from the petitioner under Section 65B(4) of the Indian Evidence Act and file the same in the form of a supplementary charge-sheet in terms of Section 173(8) of the Code of Criminal Procedure, before the learned Court below.

The petitioner will be entitled to raise all points as taken in this revisional application before the learned Trial Judge at the appropriate stage.

Accordingly, C.R.R. 105 of 2021 is disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis.

(Shampa Sarkar, J.)