

Form No. J(2)

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Jay Sengupta

C.R.R. 108 of 2022

Ramesh Mahato
Vs.
State of W.B.

For the Petitioners : Mr. Arindam Jana
: Mr. Brajesh Jha
: Mr. Soumajit Chatterjee
...for the petitioner

For the State : Mr. Madhusudan Sur, Ld. APP
: Mr. Dipankar Paramanick

Heard on: 9th February, 2022

Judgment on : 9th February, 2022

The Court:

This is application challenging an order dated 04.01.2022 passed by the learned Executive Magistrate, Serampore, Hooghly in connection with a proceeding in NGR (S) No. 474 of 2021 arising out of Uttarpara Police Station General Diary Entry No. 757 and 774 dated 12.03.2021 under Section 110 of the Code, thereby rejecting the

prayer of the petitioner under Section 116 (6) of the Code of Criminal Procedure.

Learned counsel appearing on behalf of the petitioner submits as follows. It is evident from the records that the petitioner is in custody since his date of production before the learned Executive Magistrate on 18.05.2021. The present proceeding incidentally was initiated on 16.03.2021. On 22.06.2021, the petitioner filed a show cause as per direction of the learned Magistrate. The date of show cause has to be taken as the date on which the inquiry as contemplated under Section 116 (6) of the Code commences. On this, reliance is placed on the decision of a Division Bench of this Court in **Paresh Chandra Hati & anr. -vs- Ahitosh Panda & anr.**, reported in **1978 CHN 479**. This ratio was subsequently relied upon by a Single Bench of this Court in the case of **Radhe Shyam Pandey -vs- State & ors.**, reported in **2008 Cri LJ 890**. In the present case, it is evident that from the date of commencement of the inquiry, the petitioner is in custody for more than six months. As per proviso to Section 116 Sub-Section (6), it is clear that if a person is in custody in connection with a proceeding for more than six months from the date of commencement of an inquiry, then the proceeding shall get terminated upon expiry of such period in respect of the person who has been in custody for such period. Accordingly, the present proceeding can not be continued against the petitioner as he has

already suffered custody for more than six months since a date of commencement of the inquiry.

Learned counsel appearing on behalf of the State submits as follows. By an order dated 23.12.2021 passed by this Court in CRR 2624 of 2021, this Court had modified an order passed in the impugned proceeding and directed the petitioner to furnish bond by two local sureties in stead of a Gazetted Officer. Even this condition was not fulfilled by the petitioner.

I have heard the submissions of the learned counsels appearing on behalf of the petitioner and the State and have perused the revision petition.

It may be expedient to quote the relevant portion of Section 116 of the Code of Criminal Procedure as under:

“Section 116. Inquiry as to truth of information:

.....

(6) The inquiry under this section shall be completed within a period of six months from the date of its commencement, and if such inquiry is not so completed, the proceedings under this Chapter shall, on the expiry of the said period, stand terminated unless, for special reasons to be recorded in writing, the Magistrate otherwise directs:

Provided that where any person has been kept in detention pending such inquiry, the proceeding against that person, unless terminated earlier, shall stand terminated on the expiry of a period of six months of such detention.

.....”

Thus, it is abundantly clear that whether the learned Magistrate decides to have the time period for the proceeding extended by giving special reasons or not, if the petitioner is in custody for more than six months from the date of commencement of inquiry, a proceeding under Section 116 of the Code shall stand terminated upon expiry of such period qua the petitioner.

The date on which a show cause is filed has to be taken as the date of commencement of inquiry in the present case. On this score, reliance is placed on Paresh Chandra Hati (*supra*) and Radhe Shyam Pandey (*supra*).

In the present case, the records clearly show that the petitioner filed a show cause in the impugned proceeding on 22.06.2021. Therefore, the period of six months has already lapsed, even on the date of passing of the impugned order.

Accordingly, the impugned proceeding shall be deemed to have terminated against the present petitioner on the expiry of such period.

In view of the above, I set aside the impugned order and quash the proceeding under Section 110 of the Code so far as the present petitioner is concerned in view of the lapse of six months from the date of commencement of the inquiry, in terms of Section 116 of the Code.

Urgent photostat certified copies of this order may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

(Jay Sengupta,J.)

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