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C.R.R. No.32 of 2013

In Re: An application under Section 482 of the Code of Criminal Procedure;

Abubakkar Siddik @ Sk. Rintu
Versus
The State of West Bengal & Anr.

Mr. Tapan Dutta Gupta,
Mr. Kaushik Dey,
Mr. Parvez Anam,
Mr. Rafikul Islam Sardar.
...for the petitioner.

Mr. Swapan Banerjee,
Ms. Purnima Ghosh.
...for the State.

Mr. Tapan Dutta Gupta, learned advocate appearing for the petitioner challenges the charge-sheet filed by the Investigating Agency and the cognizance which was taken by the learned Magistrate by order dated 14.12.2012. According to Mr. Dutta Gupta, the learned Special Court on an application filed by the petitioner under Section 167(5) of the Code of Criminal Procedure fixed a subsequent date of hearing and on the said date being 14.12.2012 the Investigating Agency submitted a charge-sheet in respect of a case of the year 2006 with a charge-sheet reflecting the date of 2006 and the plea taken by the prosecution was that the investigation was concluded. However, the charge-sheet was kept in the case diary and could not be placed before the court. According to the learned advocate, such plea is a lame excuse and

the learned Special Court ought not to have taken cognizance of the same. Firstly, the cognizance was barred under the provisions of Section 468 of the Code of Criminal Procedure and the correctness of the contentions so far as the prosecution was concerned was accepted to be a gospel truth.

So far as the belated filing in the charge-sheet under Section 167(5) of the Code of Criminal Procedure is concerned, I am of the opinion that it is a settled principle of law that the materials which were collected on the date of the application, that is, on 5.09.2012 was the date till which the learned Special Court should have taken into account the materials which were collected. But the other issue is that the charge-sheet was prepared in the year 2006 as is reflected from the order dated 14.12.2012 was not in consonance with the case. It was incumbent upon the learned court to assign the reasons as to whether the same was barred by limitation.

As the subject matter before this Court referred to, was a challenge in respect of the order dated 14.12.2012, I am of the opinion that the order of taking cognizance of the offence by the said order is set aside. Learned Special Court would allow the petitioner to agitate the issues on the ground of limitation for taking cognizance of an offence after six years in respect of prescribed punishment for a period of three years.

Thus, the order dated 14.12.2012 so far as it relates to taking cognizance of the offence is concerned is set aside.

The petitioner would be at liberty to take out an

application under Section 468 of the Code of Criminal Procedure. The learned Special Court would consider the same and dispose it of in accordance with law. So far as the prayer for discharge under Section 167(5) of the Criminal Procedure Code is concerned, the order of learned Special Court assigning the reasons is affirmed by this Court.

Accordingly, the revisional application being CRR 32 of 2013 is partly allowed.

Pending application, if any, is consequently disposed.

Interim order, if any, is hereby vacated.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Tirthankar Ghosh, J.)