

28.04. 2022
item No.28
n.b.
ct. no. 34

CRR 358 of 2017
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IA No. CRAN 1 of 2017(Old No. CRAN 1318 of 2017)

Chiranjib Dev
Vs.
State of West Bengal & Anr.

Mr. Swapan Kumar Mallick,
Ms. Manasi Roy
.....for the Petitioner

Mr. Imran Ali,
Ms. Sujata Das
.....for the State

Mr. Suman De
... for the opposite party no.2.

Mr. Mallick, learned advocate appears for the petitioner and submits that twice in this case earlier the petitioner was discharged by the police authorities pursuant to the closure report being filed by the Investigating Agency. Lastly an order was passed by this Hon'ble High Court subsequent to which investigating agency submitted charge-sheet alleging offence under Sections 420 and 406 of the Indian Penal Code.

The subject matter of challenge of this case relates to inferior quality of materials being used. According to the complainant although more than Rs.13,00,000/- were accepted by the Constructing Engineer but poor materials worth Rs.4,50,000/- was used. According to the learned advocate there was report of the National Test House and parties are also before the Civil Court. The issues raised by the petitioner were previously before the

Hon'ble High Court wherein an order was passed for further investigation upon the Police Authorities and for concluding investigation within the period of six months.

It is further reflected that the Police Authorities sought opinion from experts and thereafter submitted report under Section 173 of the Code of Criminal Procedure.

Learned advocate has relied upon the decision of **Sushil Sethi & Anr. Vs. State of Arunachal Pradesh & Ors.** reported in **(2010) 3 SCC 240**. Learned advocate for the petitioner submits that the very foundation of the offence where there was representation and completion of work, none of the ingredients under Section 420 or Section 406 of the Indian Penal Code can be said to be attracted. The Judgment relied upon by the learned advocate for the petitioner is on the basis of the foundation of facts where sub-standard quality of Turbines containing composition of materials not in accordance with the specification of MoU resulting in frequent damages of Runner Turbine Buckets were made. The substantial allegations are completely different from the present facts, which relate to construction of a building where the allegations are for sub-standard materials being used. The said judgment is not applicable to the facts of the case presently.

I find that the investigation was carried after the Hon'ble High Court was satisfied regarding the allegations and rest of the issues are of question of facts.

No interference is called for at this stage.

The petitioner will invite the attention of the learned Trial Court at the stage of consideration of charge regarding the previous

materials so collected by Investigating Agency, the subsequent materials on the basis of which report under Section 173 was filed before the jurisdictional Court on which the cognizance was taken, at the stage of consideration of charges. The learned Court would consider the same before proceeding to the stage of section 240 of the Code of Criminal Procedure, record his reasons regarding the reports which were subsequently collected or the materials appearing do make out a case. Thereafter, the Trial Court would proceed in accordance with law, in the alternative the Trial Court will also be at liberty to exercise the other option of discharge within the meaning of Section 239 of the Code of Criminal Procedure.

With the aforesaid observation, CRR 358 of 2017 is disposed of.

All pending connected application, if any are consequently disposed of.

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

(Tirthankar Ghosh, J.)