

Form J(1)

**IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
Appellate Side**

**Present :
The Hon'ble Justice Bibek Chaudhuri**

**IA No. : CRAN/1/2022
in
CRR 1742 of 2022**

**Subodh Singh @ Chotu
Vs.
The State of West Bengal & Anr.**

**For the petitioner : Mr. Milon Mukherjee, Sr. Adv.,
Mr. Avik Ghatak, Adv.,
Mr. Saibal Kumar Dasgupta, Adv.**

**For the State : Mr. Rudradipta Nandy, Adv.,
Ms. Sonali Das, Adv.**

Judgement on : 19.12.2022.

Bibek Chaudhuri, J.

Affidavit-of-service filed in Court today be kept with the record.

This is an application for condonation of delay by 65 days in preferring the instant revision.

It appears from the affidavit-of-service that in spite of service of notice, the opposite parties have not turned up. Therefore, the instant application under Section 5 of the Limitation Act is taken up for hearing.

It is submitted by the learned Advocate for the petitioner that the petitioner preferred an application under Section 227 of the Code of Criminal Procedure in the Trial Court praying for their discharge from Sessions Case No. 21/2019 pending before the learned Additional Sessions Judge, Asansol. The said application was rejected on 14th December, 2019 and subsequently vide order dated 19th February, 2022 the learned Trial Judge framed charges against the petitioner and other accused persons.

It is submitted on behalf of the petitioner that after the order dated 14th December, 2019 being passed, during the period of limitation within which the petitioner could have been filed a revision challenging legality, validity and propriety of the said order dated 14th December, 2019, there was covid outbreak and vide *suo motu* writ petition (C) No. 3/2020, the Hon'ble Supreme Court was pleased to condone delay in respect of filing of appeals and application, period of limitation of which expired during covid pandemic period. Thus, there was delay of 65 days in filing the instant revision.

Having heard the learned Advocate for the petitioner this Court is of the view that the petitioner has been able to make out an arguable case and accordingly delay in filing the application is condoned.

The instant revision is taken to its file.

The revision is taken up for hearing on the point of admission.

It is submitted by Mr. Milon Mukherjee, learned Senior Counsel on behalf of the petitioner that on the basis of a written complaint submitted by one Papri Basu Nayak regarding theft of gold ornaments worth Rs.4,50,000/- by 7/8 unknown miscreants on 23rd December, 2017 at about 8.55 A.M., Police registered Hirapur Police Station Case

No. 387/2012 dated 23rd December, 2017 under Sections 395/397/412 of the Indian Penal Code.

Subsequently, Police submitted charge-sheet against four accused persons. It is submitted by the learned Senior Counsel that the allegation revealed from the written complaint suggests commission of offence of robbery allegedly by the petitioner and three other accused persons. Therefore, the petitioner ought to have been charged under Section 392 of the Indian Penal Code.

It is also submitted by the learned Senior Counsel on behalf of the petitioner that in order to bring the case within the fold of Sections 395/397 of the Indian Penal Code, after submission of charge-sheet against the petitioner and three accused persons one Mithu Singh was booked in connection with the case, the Investigating Officer conducted a purported T.I. Parade and concocted a case that the said Mithu Singh was also involved in committing the offence against the charge-sheeted accused persons. Now the said Mithu Singh is dead. Therefore, the learned Judge committed apparent error in framing charge under Sections 395/397/412 of the Indian Penal Code.

Having heard the learned Advocate for the petitioner, this Court records that as per the definition of dacoity contained in Section 391 of the Indian Penal Code, when five or more persons conjointly commit or attempt to commit robbery, or where the whole number of persons conjointly committing or attempting to commit robbery, and the persons present and aiding such commission or attempt, amount to five or more, every person so committing, attempting or aiding, is said to commit "dacoity". Section 395 is the penal provision for

dacoity and Section 397 is the penal provision for commission of robbery or dacoity with attempt to cause death or grievous hurt.

At the stage of consideration of charge, the Court is concerned to see as to whether there is *prima facie* case established by the prosecution or not.

From the charge-sheet and supplementary charge-sheet, it is ascertained that the petitioner along with at least four charge-sheeted persons were involved in committing the offence. Therefore, the learned Sessions Judge rightly framed charge against the petitioner under Sections 395/397/412 of the Indian Penal Code.

I do not find any illegality or material irregularity in the impugned order. Accordingly the instant revision is summarily **dismissed**.

(Bibek Chaudhuri, J.)

Srimanta, A.R.(Ct.)
Item No. 07.