08.12.2022
S/L No.8
KS

C.R.R. 1722 of 2021
With
IA No. CRAN 1 of 2021

Divya Lal @ Dibya Lal
-Vs.-
The State of West Bengal & Anr.

Mr. Sekhar Kumar Basu, Sr. Adv.
Mr. Antarikshya Basu
Mr. Sayan Mukherjee
Ms. Madhumita Basak
…..For the Petitioner
Mr. Sudip Ghosh
Mr. Bitasok Banerjee
…..For the State
Mr. Mrinal Kanti Mukherjee
…..For the O.P. No.2

It has been informed to this Court that till date the charge has not been framed by the Learned A.C.J.M., Asansol in connection with Asansol South Police Station Case No.289 of 2015 dated 07.07.2015 under Sections 409/ 420/ 468/ 469/ 471/ 120B and 34 of the Indian Penal Code alongwith the added Sections being 498A/ 506 of the Indian Penal Code.

There is a delay in challenging the order wherein the petitioner's prayer for discharge was refused by the Learned A.C.J.M., Asansol.

Mr. Basu, learned senior advocate appearing for the petitioner prays for condoning the delay of 1076 days in preferring the revisional application. There are reasons assigned in the application for the delay.

Mr. Mukherjee, learned advocate appearing for the private opposite party and Mr. Ghosh, learned advocate appearing for the State opposes the prayer for condoning the delay and submits that the delay has been unexplained and, as such, allowing the petitioner now to argue on the issue of discharge would delay the proceedings before the Learned Trial Court.

I have considered the submissions advanced by the parties and also considered that till date the charge has not been framed by the Learned A.C.J.M., Asansol.

Having taking into account the impugned order, I am of the opinion that the delay which has occurred in preferring the revisional application should be condoned.

Accordingly, IA No. CRAN 1 of 2021 is allowed.

The main revisional application is thereafter taken up for hearing. The three issues which have been canvassed by the petitioner in the present revisional application are that firstly, the case was initiated on the basis of an application under Section 156(3) of the Code of Criminal Procedure pursuant to which Asansol South Police Station Case No.289 of 2015 dated 07.07.2015 was registered for investigation and the said application under Section 156(3) was not accompanied by an affidavit thereby violating the law laid down in the case of ***Priyanka Srivastava & Anr. Vs. State of Uttar Pradesh & Ors. r***eported in ***(2015) 6 SCC 287, 288***. Additionally, it has been submitted that no information was sent to the Superintendent of Police or the Commissioner of Police of the concerned Zone thereby violating the provisions of Section 154(3) of the Code of Criminal Procedure which is also the position of law and reiterated by the Hon'ble Supreme Court in the case of ***Lalita Kumari Vs. State of U.P. (2014) 2 SCC 1*** and ***Priyanka Srivastava (supra)***.

Second point which has been argued by the learned Senior advocate is that the Learned A.C.J.M., Asnasol while rejecting the application for discharge under Section 239 of the Code of Criminal Procedure did not take into account any materials which included the statement of the witnesses as well as the documents collected by the Investigating Agency and erroneously arrived at its finding on a presumption that since the police authorities/Investigating authorities have not discharged the petitioner and cognizance has already taken, then in that case, the cognizance should have been taken on the materials already presented by the Investigating Agency/Prosecuting Agency.

Thirdly, it has been canvassed that the present petitioner namely, Mrs. Divya Lal happens to be Manager of the Bank – the act complained of was in discharge of official duty and it was incumbent to adhere and comply with the provisions of Section 197 of the Code of Criminal Procedure.

Mr. Mukherjee, learned advocate appearing for the private opposite party opposes such contention and submits that in this case the original receipts relating to Fixed Deposit and the Recurring Deposit were lying with the complainant and her husband being one of the accused in collusion and conspiracy with the present petitioner who happens to be Manager of the Bank encashed the said fixed deposit and recurring deposit by abusing his official position wherein the present petitioner being the Branch Manager aided and abetted him. It has been submitted that as the act and conduct of the present accused do not come within the discharge of an official duty which is an illegal act, the provisions of Section 197 of the Code of Criminal Procedure are not at all attracted. To that effect, learned advocate appearing for the private opposite party relied upon in the case of ***M. Gopalakrishnan Vs. State by Addl. S.P. CBI, B.S. & F.C., Bangalore*** reported in ***AIR 209 SC 2015.***

Mr. Ghosh, learned advocate appearing for the State produces the Case Diary drawing the attention of the Court to the relevant statement of the witnesses under Section 161 of the Code of Criminal Procedure, the seizure lists, the seized materials/items mentioned in the seizure lists and submitted that most of the documents which have been seized by the Investigating Officer was pursuant to the production made by this petitioner being the Branch Manager. Learned advocate further submits that the debit vouchers which have been seized would reflect that the Fixed Deposit and the Recurring Deposit were encashed without consent of the holders therein and the Branch Manager as well as Debasis Mukherjee, the other accused abused their official position for being involved in such illegal act thereby depriving the complainant of her legal entitlement. It has been contended on behalf of the State that the complainant entered into a contract with the bank and, therefore, if any, loss has been suffered by the complainant bank is responsible for the act complained of. Learned advocate adduced that in this case the originals were in possession of the complainant, as such, she was under the belief that her assets are safe. However, behind her back the same has been encashed for which the Branch Manager being the Branch Head and without whose permission the funds cannot be transmitted to any other account has been done in this case, which exposes the Branch Manager/present petitioner to face rigors of criminal trial.

I have considered the submissions of the learned senior advocate appearing for the petitioner, learned advocate appearing for the private opposite party as well as learned advocate appearing for the State. I have also considered the Case Diary and the impugned order dated 17.06.2017 passed by the Learned A.C.J.M., Asnasol. So far as the first issue which has been canvassed by the petitioner that the complainant did not adhere to the provisions of Section 154(3) of the Code of Criminal Procedure and also did not owe the responsibility in respect of the statements made in the application under Section 156(3) of the Code of Criminal Procedure by way of an affidavit which has been settled by the Hon'ble Supreme Court in the judgment of ***Priyanka Srivastava***, I hold that there has been a change of circumstance in this case as the police authorities have collected materials and arrived at their finding under Section 173(2) of the Code of Criminal Procedure, at this stage, to consider that a criminal case should be quashed only because of the reason that the first information report was registered not in accordance with law settled by the Hon'ble Supreme Court would be to set back the clock for re-exercising the same set of acts by the police authorities. Materials collected by the Investigating Authority in this case reflects that an offence has been made out whether such offence would point finger to the petitioner or not is a separate issue.

Having regard to the totality of the circumstances as a Court of Law, I am of the opinion that the continuance of the proceedings cannot be scuttled and the non-compliance by the complainant would be treated as a curable irregularity.

So far as the other two issues are concerned, I find from the records that the learned senior advocate has rightly pointed out that the Learned A.C.J.M., Asansol did not take into account the materials relied upon by the prosecution in the statements/documents under Section 207 of the Code of Criminal Procedure. It is only after considering those materials, the Court would be able to take a decision whether the provisions of Section 197 of the Code of Criminal Procedure are to be considered at this stage or at the subsequent stage. As it has been informed to this Court that charge till date has not been framed by the Learned A.C.J.M., Asnasol, I am of the opinion that this Court should not enter into the merits of the statements of the witnesses, documents or seizures which have been effected by the Investigating Agency and the Learned Trial Court at the stage of consideration of the charges would point out the complicity of the petitioner in a case where there are charges under Section 409 of the Indian Penal Code but arising out of matrimonial discord/dispute. More than five years have been passed since the case has not progressed. It has also been informed that the next date has been fixed in the month of February, 2023. Learned A.C.J.M., Asnasol is directed to consider the observations made above while deciding on the issue of framing of charges. If it is not possible to complete the process of Section 240 of the Code of Criminal Procedure in the month of February, 2023, I direct that the whole process must be completed by 15th March, 2023.

With the aforesaid observations, C.R.R. 1722 of 2021 is disposed of.

Pending applications, if any, are consequently disposed of.

All parties are directed to act on the server copy of this order downloaded from the official website of this Hon'ble Court.

(Tirthankar Ghosh, J.)