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March 23,
2022
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CRR No.2072 of 2019

In Re: An application under Section 482 of the Code of Criminal
Procedure, 1973;

Sk. Mahiuddin Ahammed
Versus
The State of West Bengal & Anr.

Mr. Antarikhya Basu,
Ms. Madhumita Basak.
...for the petitioner.

Mr. Madhusudan Sur,
Mr. Manoranjan Mahata.
...for the State.

Affidavit-of-service so filed by the petitioner be kept with
the record.

The petitioner has challenged the proceedings arising out
of Bhowanipor Police Station Case No.440 of 2017 dated 1.10.2017
under Section 509 of the Indian Penal Code presently pending
before the learned Chief Judicial Magistrate, Alipore.

Mr. Basu, learned advocate appearing for the petitioner
submits that the petitioner happens to be a senior doctor and he
has been victimised with an ulterior motive by way of institution of
such criminal case after the Internal Committee exonerated the
present petitioner from all the charges levelled against him by the
same complainant.

Learned advocate draws the attention of this Court to the
rest of the witnesses relied upon by the complainant as well as that

of the respondent. Learned advocate also draws attention to the relevant part of the order of the Internal Committee wherein it has been observed that all the six nurses who were summoned and on whom the complainant relied upon did not confirm the allegations made by the complainant regarding the incident referred to in the complaint. The Committee also was of the opinion that there are hearsay evidence which cannot be taken into consideration and on an assessment of the Committee, no action was required to be taken against the present petitioner.

Learned advocate emphasises that there has been an exhaustive process through which a senior doctor had to undergo and the present criminal case has been instituted with ulterior motive. The present criminal case has been instituted after information regarding the outcome was within the knowledge of the complainant in the year 2017.

The present petitioner had no knowledge regarding the registration of the present case which commenced in the year 2017, but the petitioner was made aware pursuant to a notice under Section 41A of the Code of Criminal Procedure being served upon him by the investigating authorities.

Learned advocate emphasises that the totality of the circumstances if accepted in its entirety fails to make out a case so far as the present petitioner is concerned and, as such, the proceeding should be quashed.

Mr. Sur, learned Additional Public Prosecutor appearing for the State produces the case diary and draws the attention of this

Court to the statement of the complainant under Section 164 of the Code of Criminal Procedure and submits that the statement made before the Judicial Officer at this stage cannot be thrown away and if the intrinsic value of such statement is taken into consideration, offences have been made out for continuance of trial in the instant case.

I have considered the submissions advanced by the learned advocate appearing for the petitioner as well as the learned advocate appearing for the State, although none represented on behalf of the opposite party no.2 in spite of service.

This Court has been called upon to agitate at a stage when the charge-sheet has already been submitted and the copies have been supplied under Section 207 of the Code of Criminal Procedure. The Court at this stage is to weigh and balance regarding “some suspicion” and “grave suspicion”. Further, Section 240 of the Code of Criminal Procedure emphasises on the phrase “there is ground for presuming that the accused has committed an offence triable under this Chapter”.

In view of the stage at which the petitioner has approached this Court, I am of the opinion that this Court is not in a position to assess the probative value of evidence and prosecution documents in the case at hand, particularly the statement under Section 164 of the Code of Criminal Procedure is to be accepted as correct.

In view of the aforesaid, no interference can be made at this stage of the case. Accordingly, CRR No.2072 of 2019 is

dismissed.

Pending application, if any, is consequently disposed of.

Interim order, if any, is hereby vacated.

The petitioner would be at liberty to take out an application under Section 239 of the Code of Criminal Procedure, if so advised and agitate other relevant issues before the learned trial court.

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

(Tirthankar Ghosh, J.)