

11.08.2022

CRR 2807 of 2022

**Dipankar Gupta
Vs.
The State of West Bengal & Anr.**

Mr. Sourav Chatterjee, Adv.,
Mr. Aniruddha Bhattacharyya, Adv.

...for the petitioner

The petitioner is one of the accused persons in connection with Sutahati Police Station Case No.241 of 2016. In the said case police submitted charge-sheet against the petitioner and others on completion of investigation on 31st March, 2022 under Sections 120B/409/420 of the IPC.

Learned Advocate for the petitioner in the trial court filed two petitions on 20th July, 2022 – one for supplying the certified copy of the documents in the case record to enable the petitioner to move appropriate application before this Court and the other was seeking for a clarification of the trial court about the trial of the case.

Learned ACJM-II, Haldia, Purba Medinipur by his order dated 20th July, 2022 rejected both the petitions.

The first petition was rejected on the ground that charge-sheet was filed against the petitioner showing him absconder and the petitioner being absconder is not entitled to get certified copy of the documents in connections with the said case.

The second petition was rejected on the ground that the said petition was vexatious and liable to be rejected. Thus, the second petition was rejected subject to payment of cost of Rs.1000/- to be paid by the learned Advocate for the petitioner in the trial court.

It is submitted by Mr. Sourav Chatterjee, learned Advocate for the petitioner that an Advocate being the authorize representative of the accused is entitled to the certified copies of the documents on the basis of which charge-sheet was submitted against the petitioner. Supply of certified copy of the said documents to the authorize representative of an absconding Advocate cannot be denied.

It is further submitted by the learned Advocate for the petitioner that in most of the cases where charge-sheet is filed under Section 409 of the IPC, the learned Magistrate without considering the provision contained in Criminal Law Amendment, (Special Courts) Act, 1949 mechanically transferred the cases to the court of the learned Special Judges for trial and whenever accused surrenders before the court of the Magistrate

and prays for bail, his prayer is rejected citing the reason that the case is triable by the learned Special Judge.

Therefore, the learned Advocate for the petitioner filed an application to ascertain as to whether the case being GR Case No.893 of 2016 is triable by the learned Magistrate or by the learned Special Judge. Because an accused has every right to contest the case according to the advice of the learned Advocate depending upon the nature of the case, whether it is triable by the learned Magistrate or by the court of Sessions having special power under the Criminal Law Amendment (Special Courts) Act, 1949.

Considering the averment made in the instant revision as well as the submission made by the learned Advocate for the petitioner, this Court is of the view that the instant revision can be disposed of here and now.

Chapter XIV of the Criminal Rules and Orders deals with the copying department and the copies. Rule 252 states:-

“R.252. Parties to a criminal proceeding are entitled to obtain copies, certified or uncertified, of any portion of the record of trial or inquiry including such police papers as may be made use of as evidence at the trial or inquiry and final reports submitted by the police under Section 173 of the Code.”

The above provision does not designate an accused who has surrendered or his absconding. If a person is arraigned as an accused, his authorized representative/ Advocate is entitled to get certified copies of any portion of the record and police paper as may be made use of as evidence.

Therefore, the learned trial judge is absolutely wrong in refusing the prayer for certified copies of documents to the learned Advocate for the accused on the ground that he is absconding.

The schedule of the West Bengal Law Amendment (Special Court) Act, 1949 reads as under:-

“THE SCHEDULE

Offences triable by Special Judges

2. An offence punishable under Section 409 of the Indian Penal Code, if committed by a public servant or by a person dealing with property belonging to Government as an agent of Government (or by a person dealing with property belonging to a Government Company as defined in Section 617 of the Companies Act, 1956 as an agent of such Government Company) in respect of property –
 with which he is entrusted, or
 over which he has dominion
 in his capacity of a public servant or in the way of his business as such agent.”

Thus, plain reading of the schedule to the West Bengal Criminal Law Amendment, (Special Courts) Act, 1949 shows that an offence under Section 409 of the

IPC if committed by a public servant or an agent of the government or by a person dealing with property belonging to a government company are liable for prosecution before the learned Special Judge.

In all other cases offence under Section 409 of the IPC is triable by the learned Magistrate.

The accused is entitled to know as to whether his case is triable by the learned Magistrate or the learned Special Judge. In any event, the accused is entitled to act upon the advice of his learned Advocate.

On perusal of the impugned order dated 20th July, 2022 it appears to this Court that the learned ACJM-II, Haldia, Purba Medinipur was unnecessarily suspicious against the learned Advocate for the petitioner.

Therefore, the order dated 20th July, 2022 is set aside.

The learned Magistrate is directed to give necessary information to the learned Advocate for the petitioner as sought for by him immediately on receipt of the server copy of this order.

The instant revision is, thus, disposed of.

(Bibek Chaudhuri, J.)