

15.09. 2022
item No.05
n.b.
ct. no. 551

CRR 3711 of 2017

**Sri Bablu Koley @ Sankar Koley & Ors.,
Vs.
The State of West Bengal & Anr.**

Mr. Dipanjan Chatterjee,
Mr. Asit Nayek
.....for the petitioners

Ms. Faria Hossain,
Mr. Sandip Chakraborty,
.....for the State

The instant criminal revision has been preferred against the order dated August 08, 2017 passed by the Learned Metropolitan Magistrate, 4th Court, Calcutta in connection with G.R. Case No.197 of 2011.

The present opposite party no.2 has filed an application under section 156(3) of the Code of Criminal Procedure before the Learned Metropolitan Magistrate, 4th Court, Calcutta against Smt. Sundar Bala Dasi and five others. In the said petition the present petitioners were named as accused persons no. 5 and 6.

On the basis of such petition of complaint Learned Chief Metropolitan Magistrate directed the Officer-in-charge Shakespeare Sarani Police Station to registrar a police case treating the petition of complaint as FIR. Hence the Shakespeare Sarani police station case no. 16 of 2011 dated January 16, 2011 was initiated under Section 420/120B/34 of

the Indian Penal Code. The Investigation of police is ended in charge sheet vide charge-sheet no.52 of 2014 dated 18.3.2014 indicating the present petitioner as accused. One discharge application was filed by the present petitioners before the learned Court below under Section 239 of the Code of Criminal Procedure, which was turned down by the learned Court below by the impugned order. Hence this instant revision.

Learned advocate for the petitioner submitted before this Court that no offence has been made out by the Investigating Officer against the present petitioner. The present petitioners are merely witnesses of the alleged agreement, which was made a part of the charge-sheeted document. He further argued that the complexity against the present petitioner in respect of the instant offence has not been proved by the filing charge-sheet. No witness uttered a single word against the present petitioner. The Investigating Agency also failed to establish a single evidence against the present petitioner. Thus, the present petitioner is liable to be discharged from this case. He further argued that the impugned order passed by the learned Court below is illegal and he has not assigned any reason whatsoever for rejecting of the application under Section 239 of Cr.P.C. He further argued that the instant impugned order suffers Illegality and impropriety and is liable to be set aside by discharging the present petitioner.

Learned advocate appearing on behalf of the State submitted the Case Diary and raised strong objection. He

argued that after completion of investigation police has collected several materials regarding the involvement of the petitioner of the alleged evidence. The matter has been very specific investigating by the police and they have collected several documents as well as the witnesses. However, it appears that the allegation against the present petitioner under Section 420/120B/34 of the Indian Penal Code has been sufficiently proved. He further argued that the present petitioners were very much involved along with main accused persons. So they cannot be discharged at this stage. If it is found that no evidence has been collected or no case has been made out against the present petitioners, they may be acquitted after trial of this case but at this juncture there prayer cannot be considered. However, learned State advocate submitted that the impugned order is not speaking order so necessary order may be passed to remand the case back before the learned Court below for proper consideration of the petition under Section 239 of Cr. P.C.

Heard the learned advocates, perused materials on recorded also perused the Case Diary. The charge-sheet disclosed the name of the present petitioners as an accused persons. Only one statement of available witness was recorded by the police during the course of investigation under Section 161 Cr.P.C that does not disclose the name of the petitioners. The fact of the case stated in the C.S. and total investigation conducted by the police day by day did not disclose the name of the present petitioner to be involved in the alleged offence

under Section 120B read with 420 Indian Penal Code. It further appears that during the course of investigation police has collected the alleged agreement for sale wherein the name of the present petitioners are transpired as witness no.1 and 4 respectively. The memo of consideration where the money was received also transpire the name of the present petitioner no.1 to be witnesses. Nowhere it is reflected that the present petitioners were at all involved in the alleged offence. The ingredient of offence punishable under Section 420 of the IPC is not at all substantiated by any single evidence during the entire course of investigation so far collected by the Investigation Officer. Considering the entire circumstances it appears to be that the present petitioner may very well be termed C.S. witnesses instead C.S. accused persons. However, it is the prerogative of the prosecution to frame/cite the witnesses of a case. Upon considering the C.S. and materials on record and also after hearing learned advocates it appears to me that the charge against the petitioners/accused persons is groundless. I am of clear view that the offence under Section 420/120B/34 IPC has not made out by the entire investigation against the present accused/petitioners. Accordingly, I find that there is the merits of discharge in favour of the present petitioner.

In that score, the impugned order passed by the Learned Court below suffers illegality and impropriety and it is liable to be set aside.

In result, there be the criminal revision is allowed.

The impugned order passed by the learned Court below rejecting the application under Section 239 Cr. P.C. filed by the present petitioner is hereby set aside. The present petitioners are hereby discharged from the criminal case under Section 239 of Cr.P.C.

They are set at liberty.

Surety standing in their favour are also released.

Accordingly, the revisional application being CRR 3711 of 2017 and connection applications, if any, are disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

(Subhendu Samanta, J.)