

25.01.2022

Item No.51
Ct.No.34
dc.

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION**

C.R.R. 1937 of 2020
(Via Video Conference)

Sri Pradeep Kumar Gupta
versus
State (The Central Bureau of Investigation,
Anti-Corruption Branch, Kolkata)

In Re: An Application under Sections 482 and 401 of the Code of Criminal Procedure, 1973.

Mr. Subhadip Biswas ... For the Petitioner.

Mr. Y. J. Dastoor, Ld. A.S.G.,
Mr. Phiroze Edulji,
Mr. Samrat Goswami ... For the Opposite Party.

In this case charges were framed on 20.06.2013 against the present petitioner under Sections 7 and 13(1)(d) read with Section 13 (2) of the Prevention of Corruption Act, 1988. The said order reflects that there was no objection on behalf of the present petitioner/accused if charges are framed.

Learned court after framing of the charges was pleased to fix date on 08.08.2013 for examination of prosecution witnesses and after much persuasion, on 07.05.2014 the examination of PW-1 viz. one Md. Haleem Khan started. On the said date, the examination-in-chief of the witness was over and on the prayer of the accused, further date for cross-examination of PW-1 was fixed on 27.06.2014. The witness was present on 27.06.2014 and further time was prayed on behalf of the present petitioner before the learned special court. Thereafter on 22.08.2014, the accused filed an

application under Section 91 of the Code of Criminal Procedure and Section 66 of the Indian Evidence Act praying for supply of documents and for hearing of the said application. The hearing was concluded on 17.12.2014 and the learned trial court by an exhaustive order was pleased to refuse such prayer and granted liberty to the petitioner to renew such prayer at the stage of defence witness.

Against the said order, the petitioner approached the High Court. There was an initial order of stay and finally on 02.07.2015, the learned special court recorded that further order of stay be placed before the said court. Similar orders were passed and the order dated 06.11.2015 reflects that time was sought for because of the revisional application was pending before the High Court and for bringing orders from the Hon'ble Supreme Court, the learned special court granted time on 05.12.2015, 01.02.2016, 23.05.2016, 11.07.2016 and 14.09.2016. Thereafter by order dated 24.11.2016 and all subsequent orders, the court started proceedings for evidence. However, by that time, the prosecution lost its track and no witness was present on number of dates. In the meantime, on 18.12.2017, a communication was filed before the learned special court that a transfer petition was filed before the Hon'ble Supreme Court wherein stay was granted. Thereafter the case continued without any progress throughout the year 2018. Finally, the transfer petition and its review application were dismissed by the Hon'ble Supreme Court and thereafter astonishingly again an application for

discharge was preferred under Section 227 of the Code of Criminal Procedure. The learned special court fixed number of dates for hearing of the said application under Section 227 of the Code of Criminal Procedure and finally by an order dated 17.12.2020, the learned special court was pleased to dismiss the said application on the ground that the points which have been canvassed under Section 227 of the Code of Criminal Procedure cropped up during the course of examination-in-chief and cross-examination of the PW-1 and the same is therefore misconceived and not maintainable.

The investigation of the case started in the year 2010 and the issue which is the cause of initiation, relates to utilization of funds. The investigating agency on conclusion of investigation, arrived at its finding regarding *prima facie* case being made out and the court on scrutiny of the documents was also pleased to frame charges under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988.

Learned advocate appearing for the petitioner has submitted that as the learned special court is empowered to act as Magistrate in trial of such cases according to the provisions of warrant procedure case, the provisions of Section 245 of the Code of Criminal Procedure are attracted and as such, at any time, the accused is entitled to pray for discharge. Such contention and foundation of law is unheard of as under the relevant chapter of the Code of Criminal Procedure, there are two parts; firstly, cases instituted on

police report and secondly, cases instituted otherwise than on police report. The present case is a case where charge-sheet has been submitted. Therefore, it can be presumably said that the case is one wherein the proceedings should progress according to warrant procedure cases where police report is filed. Therefore, there is no applicability of Section 245 of the Code of Criminal Procedure in this case. What is much more frustrating is that before the learned special court, the provisions of Section 227 of the Code of Criminal Procedure has been invoked, which are applications filed prior to consideration of charge in sessions triable cases. The manner in which it has been argued and a perusal of records of the case reflect, that the petitioner is bent upon to invoke either Section 239 of the Code of Criminal Procedure or Section 227 of the Code of Criminal Procedure or Section 245 of the Code of Criminal Procedure and thereby stall the proceedings and stagnate the prosecution so that with passage of time, no witness is available to depose before the court of law. There was a particular purpose for which the special court was constituted and the statutes relating to corruption had to be proceeded in those courts, which segregates such courts from the normal trials being carried on by the Magistrate and the Sessions Judges so that such trials can be disposed of at an early stage or the provisions of Section 309 of the Code of Criminal Procedure can be adhered to in its true spirit.

The petitioner in this case has successfully frustrated the progress of the trial as knowingly after the evidence was

started, application for discharge has been preferred before the learned trial court. Accordingly, there are no merits in this application and the conduct of the present petitioner warrants this Court to impose costs.

As such, the petitioner is directed to deposit costs of Rs.50,000/- (Rupees fifty thousand only) with the learned special court within a period of 21 days from date preferably by 17th February, 2022.

In case the petitioner defies this order, the learned special court would rehear the issue of bail of the petitioner. Additionally, the learned special court would not allow the petitioner to leave the city of Kolkata and regularly fix dates for witnesses of the case.

So far as the trial of the case is concerned, the learned special court would strictly adhere to the provisions of Section 309 of the Code of Criminal Procedure and complete the trial within a reasonable period of time.

If any of the witnesses on the date so fixed are not present, as is reflected from the earlier ordersheets, the learned special court would exhaust harsher process of law.

Learned special court is directed to submit a report of compliance before the learned Registrar General, High Court, Calcutta.

With the aforesaid observations, the revisional application being CRR 1937 of 2020 is dismissed.

All pending connected applications, if any, are consequently disposed of.

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

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Tirthankar Ghosh, J.)