

02.12.2022
Court No. 3
Sl. No. 1

CALCUTTA HIGH COURT CIRCUIT BENCH
AT JALPAIGURI

C. R. R. 111 OF 2021

In Re: An application under Section 401 read with Section
482 of the Code of Criminal Procedure, 1973.

And

In the matter of: **Pradip Kumar Chakraborty**

Petitioner.

Mr. Amales Roy, Adv.,

Mr. Suman Sehanabis (Mandal), Adv.

.....For the Petitioner

Ms. Aditishankar Chakraborty, Ld. APP.,

Mr. Niloy Chakraborty, Adv.

.....For the State

The instant application is filed under Section 401 read with Section 482 of the Code of Criminal Procedure against the impugned Order dated 9th March, 2021 passed by the learned Sessions Judge, Cooch Behar in connection Criminal Revision No. 1 of 2021 affirming the Order passed by the Chief Judicial Magistrate, Cooch Behar in connection with G. R. Case No. 829 of 2013.

Sum and substance of the case is that the District Magistrate, Cooch Behar, being the Opposite Party No. 2 lodged a suo motu complain against the present Petitioner

with the Superintendent of Police, Cooch Behar which was registered as Kotwali Police Station Case No. 830 of 2013 dated 1st December, 2013 under Section 13 (2) and 13 (1) (e) of the Prevention of Corruption Act. The Petitioner was arrested and produced before the Trial Court on 1st December, 2013. It is the case of the Petitioner that investigation was procrastinated beyond the statutory period of three (3) years infringing Section 167 (5) of the Code of Criminal Procedure, 1973 (West Bengal State Amendment). The Petitioner filed an application on 30th August, 2018 praying for an order of stopping further investigation and discharging the present Petitioner. On 30th August, 2018 charge sheet was submitted on 16th November, 2018. Subsequently on 20th January 2021, the application filed by the Petitioner on 30.08.2018 was rejected by the Chief Judicial Magistrate, Cooch Behar. Petitioner filed a criminal revision application being Criminal Revision No. 1 of 2021 under Sections 397, 399 and 401 of the Code of Criminal Procedure before the Sessions Judge, Cooch Behar. In terms of the impugned Order dated 09.03.2021, the Sessions Judge, Cooch Behar rejected the revisional application as being not maintainable.

On being aggrieved and dissatisfied the instant application was filed.

Mr. Roy produced list of dates of the pending proceeding before the Chief Judicial Magistrate at the time of hearing on the strength of which he submitted that there was no specific Order passed by the Magistrate extending time limit of investigation. Therefore, according to Mr. Roy the investigation made subsequent to the extended period contemplated in Section 167 (5) of the Code of Criminal Procedure (West Bengal State Amendment), has no legal efficacy. According to him the Petitioner should be discharged, therefore.

Mr. Chakraborty, learned Additional Public Prosecutor submitted that the investigation and collection of documents taking considerable period of time i.e. the reason why delay was caused in filing charge sheet.

Sub-Section 5 was introduced in Section 167 of the Code of Criminal Procedure by West Bengal Act of 24 of 1988. By such amendment a time frame is fixed for investigation. However, there is a rider that the Magistrate shall make order of stopping further investigation into the offence and shall discharge the accused unless the officer making the investigation satisfies the Magistrate that for special reasons and in the interest of justice the continuation of the investigation beyond the period mentioned in sub-section is needed. The principle

underlined in 167 (5) is well-explained by three Judges' Bench of the Supreme Court of India in **Nirmal Kanti Roy Vs. State of West Bengal [(1993) 3 SCC 288]** :

“7. The order stopping further investigation into the offence and the consequential order of discharge are not intended to be automatic sequel to the failure to complete investigation within the period fixed in the sub-section. The succeeding words in the sub-section confer power on the court to refrain from stopping such investigation if the Investigating Officer satisfies the Magistrate of the fusion of two premises (1) that in the interest of justice it is necessary to proceed with the investigation beyond the period shown in the sub-section and (2) that there are special reasons to do so.

8. A reading of sub-section (6) further shows that even in a case where the order stopping investigation and the consequent discharge of accused has been made that is not the last word on it because the sub-section opens another avenue for moving the Sessions Judge. If the Sessions Judge is satisfied that “further investigation into the offence ought to be made” he has the power to allow the investigation to proceed. Hence we take the view that the time

schedule shown in Section 167(5) of the Code is not to be treated with rigidity and it is not mandatory that on the expiry of the period indicated therein the Magistrate should necessarily pass the order of discharge of the accused. Before ordering stoppage of investigation the Magistrate shall consider whether, on the facts of that case, further investigation would be necessary to foster interest of criminal justice. Magistrate at that stage must look into the record of investigation to ascertain the progress of investigation thus far registered. If substantial part of investigation was by then over, the Magistrate should seriously ponder over the question whether it would be conducive to the interest of justice to stop further investigation and discharge the accused.”

The principle of law, so explained, clarifies that it is not a mechanical process to pass the order of stopping of investigation and to discharge of the accused. It is also not an automatic process to discharge the accused.

In this case, the concerned Magistrate extended time on 22.06.2018 for six (6) weeks. Thereafter, Investigating Officer of the case submitted prayer and prayed for extension of time but the Magistrate concerned neglected

to apply mind and consider the prayer. But there was no order to stop investigation. It is not the negligence of the Investigating Officer or failure on his part to submit explanation or prayer for extension of period of investigation.

In view of the principles of law, stated above and facts and circumstances of the case, it is not a fit case to pass order to stop or set aside the investigation and to discharge the present petitioner.

Accordingly the instant application stands dismissed.

No order of costs.

(Sugato Majumdar, J.)