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CRR 203 of 2018

**Rajib Ranjan Kumar
Versus
State of West Bengal & Anr.**

Mr. Rajdeep Mazumder,
Mr. Pritam Roy,
Mr. Abhijit Singh.

... for the petitioner.

Mr. Bidyut Kumar Roy,
Ms. Manasi Roy

.... For the State.

By this revisional application under Section 401 read with Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as Cr.P.C), the proceeding arising out of Bidhannagar North Police Station Case No. 176 of 2014 dated 11th September, 2014 under Sections 379/411/120B of the Indian Penal Code pending before the learned Court of Additional Chief Judicial Magistrate Bidhannagar, North 24 Parganas is challenged.

The allegation, in brief, is that on 11th September, 2014 in the morning one public bus stand was demolished and broken structure was taken away by one Sanjay Chowdhury and his labourers. The Ward Commissioner Smt. Swati Banerjee rushed to the spot and demanded proper documents for demolition from Sanjay Chowdhury, but he could not show any document therefor and he said that he did that illegal works as per instruction of the petitioner i.e.

Rajib Ranjan Kumar.

On receipt of that written complaint, formal FIR was drawn up and Bidhannagar P.S. Case No. 176 of 2014 dated 11.09.2014 under Section 379/411/120B of the Indian Penal Code was started against Sanjay Chowdhury and Rajib Ranjan Kumar.

After investigation chargesheet was submitted against Rajib Ranjan Kumar and Sanjoy Chowdhury under Section 379/411/120B of the Indian Penal Code.

But, de facto complainant, Smt. Swati Banerjee again filed one naraji petition with a prayer for further investigation of the case on the ground that chargesheet was filed without proper investigation by the I.O. Learned Additional Chief Judicial Magistrate Bidhannagar took up that application and allowed the prayer for further investigation.

After further investigation subsequently on 13.02.2016 second chargesheet was filed against the same accused namely Rajib Ranjan Kumar and Sanjay Chowdhury under Section 379/411/120B of the Indian Penal Code.

Mr. Rajdeep Mazumder, learned advocate appearing on behalf of the petitioner has submitted that there is nothing incriminating materials in this case against the petitioner/Rajib Ranjan Kumar save and except the statement of co-accused namely Sanjay Chowdhury. Mr. Mazumder further submitted that offence alleged in this case under Section 379 has no application in case of the petitioner as there is no allegation of theft against the petitioner, Rajib

Ranjan Kumar. In this regard, he further referred to definition of clause of Section 378 of the Indian Penal Code. Mr. Mazumder has submitted, by referring to seizure articles mentioned in the chargesheet itself, that nothing was recovered from the petitioner, Rajib Ranjan Kumar, to attract the offence under Section 411 of the Indian Penal Code.

With regard to Section 120B of the Indian Penal Code Mr. Mazumder has submitted that there is no evidence on record against petitioner, Rajib Ranjan Kumar save and except the statement of co-accused, Sanjay Chowdhury.

Before parting with his argument, Mr. Mazumder has referred to Section 186 and 187 of the West Bengal Municipal Act, 1993 and submitted that allegation made in this case are punishable under section 186 of the West Bengal Municipal Act, 1993 not under the Indian Penal Code.

Mr. Bidyut Kumar Roy, learned advocate appearing on behalf of the State has submitted that proceeding cannot be quashed at this stage as statement of co-accused can only be evaluated at the time of trial. In support of his contention, he referred to the material in the Case Diary particularly the statement of witnesses who stated that Sanjay Chowdhury disclosed that he demolished the structure on an instruction of Rajib Ranjan Kumar.

Section 482 preserves the inherent power of the High Court to prevent abuse of process of court to secure ends of justice. At the time of quashing the criminal proceeding in exercise of jurisdiction under section 482 of the Cr. P.C., this

court must have to evaluate whether the ends of justice would justify the exercise of the inherent power.

In this case, chargesheet was filed initially under Section 379/411/120B of the Indian Penal Code and after re-investigation again chargesheet was filed under the same sections.

On careful perusal of the two chargesheets, I find that second chargesheet is just replica of the first. Allegation is against the petitioner is totally based on the statement of co-accused, Sanjay Chowdhury as it appears from the written complaint and the statement of witnesses recorded under Section 161 of the Cr. P.C. during investigation.

From the definition clause of theft i.e Section 378 as well as Section 379, I do not find anything on record and Case Diary to involve the petitioner i.e Rajib Ranjan Kumar. It is needless to mention that nothing was recovered from the possession of the petitioner, so question of committing offence under Section 411 of the Indian Penal Code does not arise in case of Rajib Ranjan Kumar.

In respect of Section 120B of the Indian Penal Code, the investigating agency implicated the petitioner Rajib Ranjan Kumar in the chargesheet, only on the statement of co-accused.

On careful scrutiny of the entire Case Diary, I do not find any substantive piece of evidence to justify the statement of co-accused.

That apart, the demolition of street or street furniture,

without permission from lawful authority is liable to be prosecuted under Section 186 of the West Bengal Municipal Act, 1993.

Considering all facts and circumstances discussed above, I am of the opinion that the proceeding in connection with Bidhannagar North Police Station Case No. 176 of 2014 dated 11th September, 2014 under Sections 379/411/120B of the Indian Penal Code is liable to be quashed against the petitioner only.

Thus, the revisional application stands allowed.

The proceeding in connection with Bidhannagar North Police Station Case No. 176 of 2014 dated 11th September, 2014 under Sections 379/411/120B of the Indian Penal Code pending before the learned Court of Additional Chief Judicial Magistrate Bidhannagar, North 24 Parganas stands quashed, in respect of petitioner only.

Urgent photostat certified copy of the order, if applied for, be given to the parties on usual undertakings.

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

(Bibhas Ranjan De, J.)