

IN THE HIGH COURT AT CALCUTTA
(CRIMINAL REVISIONAL JURISDICTION)

PRESENT:

THE HON'BLE JUSTICE SIDDHARTHA ROY CHOWDHURY

CRR 537 of 2012
CRAN 2 of 2013

SAJAL MUKHOPADHYAY
VS.
STATE OF WEST BENGAL

For the Petitioner : Mr. Sandipan Ganguly, Adv.
Mr. Somopriay Chowdhury, Adv.
Mr. Dipayan Dan, Adv.

For the State : Mr. S.G. Mukherjee, Ld. P.P.
Mr. Arijit Ganuly, Adv.
Mr. Sanjib Dan, Adv.

Hearing concluded on : 11th August, 2023

Judgement on : 11th August, 2023

Siddhartha Roy Chowdhury, J.:

1. Heard Mr. Chowdhury, learned counsel appearing on behalf of the petitioner and Mr. Mukherjee, learned Public Prosecutor, High Court, Calcutta.
2. This application under Section 482 of Code of Criminal Procedure challenges the legality and propriety of Uluberia Police Station Case No. 213 of 2007 dated 23.6.2007 under Sections 409/407 of the Indian Penal Code in the proceeding being G.R. Case No. 564 of 2007 pending before the learned Additional Chief Judicial Magistrate, Uluberia and the orders passed by learned Additional Chief Judicial

Magistrate, Uluberia dated 13.9.2010, 19.5.2011, 23.6.2011, 23.8.2011, 04.11.2011 and 15.11.2011.

3. Briefly stated Mr. Amitava Banerjee, the Sub-Divisional Officer, Uluberia on 23.6.2007 informed the Inspector-in-Charge of Uluberia Police Station about the shortage of Non-Judicial Stamp Papers and Entertainment Stamps in the Treasury. It was disclosed that on inspection of a double-lock of Uluberia Treasury by one Nilanjan Sandilya, Ex – S.D.O. Uluberia and Bedanga Biswas, Deputy Magistrate, and Deputy Collector Uluberia some discrepancies surfaced relating to two non-judicial stamps amounting to Rs. 25,000/- each, 100 non-judicial stamps of Rs. 5,000/- each and 67 sheets of entertainment stamps of 75 paisa each and 12 sheets of similar stamps of Rs. 2.25 each were found missing from a packet worth Rs. 5 lacs. The stamps found in the packet were all unnumbered. The matter was brought to the notice of the District Magistrate, Howrah and the Additional District Magistrate, Howrah, after holding an inspection pointed out that Sri Sajal Mukhopadhyay, stamp clerk is involved in this matter.
4. As the information disclosed offence cognizable in nature, Uluberia P.S. Case No. 213 of 2007 was registered on 23.6.2007 and police took up investigation. On 04.7.2007 the accused person was brought under arrest before the learned Additional Chief Judicial Magistrate, Uluberia subsequently, he was enlarged on statutory bail. The Investigating Officer could not file the charge-sheet within the time limit prescribed under the law. On 13.9.2010 the Investigating Officer

prayed before the learned Jurisdictional Magistrate for extension of time to complete the investigation and the prayer was allowed and the learned Trial Court was extended the time till 27.12.2010 which was further extended till 19.5.2011. Further prayer was made by the Investigation Officer for extension of time and on 23.6.2011 the date was fixed for consideration of the prayer. Learned Jurisdictional Magistrate was pleased to extend the time further and on 23.8.2011 was the date fixed for filing of final report. But the date was further extended till 15.11.2011 by the learned Additional Chief Judicial Magistrate, Uluberia. It is contended by the accused petitioner that the learned Jurisdictional Magistrate, kept on extending time mechanically. There was non application of mind and time was extended in the breach of the provision of law.

5. It is submitted by Mr. Chowdhury, learned counsel appearing on behalf of the petitioner that since the offence under Section 409 of Indian Penal Code, since cannot be held to be exclusively triable by the Court of Sessions rather this is triable by the Special Court if the offence is committed by any public servant or by the learned Judicial Magistrate, as the case may be, the amended provision of Section 167(5)(ii) of West Bengal Criminal Law Amendment Act, 1988 cannot be pressed into service. It is to be considered in the light of Section (iii), therefore, the Investigating Agency was under obligation either to complete the investigation within two years from the date of arrest of the accused petitioner or to pray before the competent Court of law for extension of time before the expiry of the prescribed time

limit. Admittedly, for the first time, the Investigating Officer prayed before the learned Jurisdictional Magistrate on 13.9.2010 for extension of time.

6. Learned Trial Court without taking into consideration the provision of law entertained the application of the Investigating Officer and extended the time on numerous occasion till 15.11.2011 in the breach of provision of law.
7. Refuting such contention Mr. Mukherjee, learned Public Prosecutor, High Court, Calcutta submits that the offence allegedly committed under Section 409 of Indian Penal Code by a public servant is to be tried by the learned Special Court and in the State of West Bengal learned Sessions Judge is designated as Special Court, therefore, this case should be considered in the light of Section 167(5) (ii) of West Bengal Criminal Law Amendment Act, 1988 and not otherwise.
8. To buttress his submission Mr. Mukherjee, placed his reliance on the judgement of the Hon'ble Apex Court in the case of **Nirmal Kanti Roy vs. State of West Bengal** reported in **(1978) 4 SCC 590** to indicate that date of arrest should be the date to reckon the period of three years and admittedly the petitioner was arrested on 04.7.2007, therefore, the Investigating Officer was under obligation to file the application within three years from that date.
9. Drawing my attention to the case diary, Mr. Mukherjee, submits that well ahead of time the Investigating Officer submitted his prayer for consideration by the learned Additional Chief Judicial Magistrate,

Uluberia but for some reason or the other the petition was not disposed of.

10. According to Mr. Mukherjee, act of Court shall prejudice none.

Therefore, the prosecution should not be made to suffer, the petition under consideration is of no merit and may be rejected.

11. The crucial point in this case to my understanding is the time span prescribed by law. Whether the case should be governed under Section 167(5)(ii) of Code? To address the issue, I take refuge to the decision of the Hon'ble Apex Court in the case of **Nirmal Kanti Roy (supra)** in paragraph 6 held :

“6. There is no dispute that clause (iii) in Section 167 (5) of the Code would apply to the facts of this case as the offence under Section 409 IPC was neither triable by the Magistrate as a summons case nor exclusively triable by a Court of Session, but triable only by a Special Court in view of the Special Courts Act, 1949. There is also no dispute that the charge-sheet was not submitted within two years “from the date on which the accused was arrested or made his appearance ”. This Court has held in State of W.B. vs. Pranab Ranjan Roy that :

“The words ‘made his appearance’ in Section 167(5) are used along with the preceding words which by themselves form into a composite collocation as thus: ‘From the date on which the accused was arrested or made his appearance.’ It must be noted that the purpose of the sub-section is to impose a time schedule for completion of investigation and such time schedule is to commence either ‘from the date of arrest of the accused or the date when he made his appearance in court’.”

So the two-year period mentioned in clause (iii) must be reckoned from 18.3.1993 on which date the appellant surrendered himself in court.”

12. It is clearly laid down that the investigation is to be completed from the date of arrest within two years period as mentioned in Clause (iii) and not otherwise, therefore, I have no hesitation to hold that the investigating authority was under obligation either to complete the investigation within two years as prescribed under Section 167(5) (iii) or to seek extension of time before the learned Jurisdictional Magistrate. The provision of Section 167(5)(ii) of the Code cannot be placed into service in a case under Section 409 of Indian Penal Code.
13. Therefore, I am of the view that the learned Additional Chief Judicial Magistrate, Uluberia acted in breach of provision of law as laid down under Section 167 (5)(iii) of Code and thereby failed to exercise jurisdiction vested in the Court.
14. Under such circumstances, I consider it a fit case to invoke the provision of Section 482 of Cr.P.C. and to quash the proceeding in G.R. Case No. 564 of 2007 pending before the learned Additional Chief Judicial Magistrate, Uluberia to avert the abuse of process of law. The proceeding in G.R. Case No. 564 of 2007 stands quashed along with the application being CRAN 2 of 2013.
15. The criminal revision, is thus, disposed of.
16. Let a copy of the order be sent to the learned Trial Court for information and necessary action.

17. Urgent Photostat certified copy of this order, if applied, be given to the parties, upon completion of requisite formalities.

(SIDDHARTHA ROY CHOWDHURY, J.)