

Form J(1)

**IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
Appellate Side**

Present :

The Hon'ble Justice Bibek Chaudhuri

CRAN/3/2023

In

C.R.R. 2621 of 2022

Chetna Karnani

Vs.

The State of West Bengal & Anr.

**For the petitioner : Mr. Sandip Kumar Bhattacharyya, Adv.
Mr. Aneek Pandit, Adv.
Ms. Sonakshi Mitra, Adv.
Mr. Ali Rizvi, Adv.
Ms. Tanistha Jain, Adv.
Mr. Avijit Kundu, Adv.**

Heard on : 04.05.2023.

Judgment On : 04.05.2023.

Bibek Chaudhuri, J.

The petitioner has approached this Court in criminal revision jurisdiction assailing an order dated 18th June, 2022 passed by the learned Chief Metropolitan Magistrate, Calcutta in G.R. Case No.2391 of 2016 arising out of Cyber Police Station, Kolkata Case No.146 of 2016 dated 25th November, 2016 thereby rejecting the prayer of discharge under Section 239 of the Code of Criminal Procedure filed by the petitioner.

Indisputably a charge-sheet was submitted against the petitioner for committing the offence under Sections 507/509 of the Indian Penal Code

and Sections 66C/67/67A of the IT Act upon a complaint submitted by one Deepa Raj on 21st November, 2016.

Suffice it to say that the de-facto complainant made a complaint of harassment of obscene messages and threat to her and her family members over whatsapp messages through certain mobile phone used by some unknown persons having its mobile No.90620-60874.

The Cyber Police Station took up the case for investigation. On completion of investigation, the Investigating Officer seized some mobile phones from the possession of the present petitioner/accused. Thereafter, forensic examination was done over the seized mobile phone and finally charge-sheet was submitted against the petitioner. The petitioner filed an application under Section 239 of the Code of Criminal Procedure praying for his discharge. The said application was rejected by the learned Chief Metropolitan Magistrate, Calcutta vide order dated 18th June, 2022.

The instant revision is specially fixed for hearing. The State of West Bengal/opposite party No.1 previously appeared before this Court to contest the instant revision. Even the opposite party No.2/de-facto complainant was represented through her learned Advocate. However, today when the matter is taken up for hearing, the opposite parties are not represented. On the basis of submission made by the learned Advocate for the petitioner, this Court proceeds to dispose of the instant revision on merit.

It is submitted by the learned Advocate for the petitioner that after investigation police submitted charge-sheet and in the charge-sheet it was stated that the accused/petitioner used a mobile phone having IMEI

Nos.911476051698400 and 911476050698400 respectively for harassing and sending obscene messages to the de-facto complainant. However, it is revealed from the seizure list dated 5th December, 2016 that the device that was seized from the possession of the petitioner had IMEI No.911476050691849 and 911476051691848. Therefore, the IMEI numbers of the mobile phone of the petitioner does not match with the seized mobile phone, which was used for the purpose of committing the offence. Therefore, the very basis of the case against the petitioner has not been prima facie established.

The learned Magistrate did not consider the said fact and the documentary evidence on record. On the contrary, he flatly rejected the said application holding, *inter alia*, that the specific case made out by the accused would be decided during trial. If from the documents itself the accused is found to be innocent, why should he be prosecuted maliciously in a criminal case.

In view of such circumstances, the instant revision is allowed.

The impugned order dated 18th June, 2022 is set aside.

The learned Chief Metropolitan Magistrate, Calcutta is directed to rehear the application under Section 239 of the Code of Criminal Procedure within three weeks from the date of communication of this order and dispose of the same taking into account the observation of this Court made hereinabove.

The petitioner is at liberty to act on the server copy of the order.

(Bibek Chaudhuri, J.)

**Mithun De/
A.R. (Ct).
SI No.299.
M/L.**