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C.R.R.3057 of 2022

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

Sri Aloke Ranjan Joardar
Versus
The State of West Bengal and others

Mr. Sukanta Chakraborty
Mr. Anindya Halder.
...for the petitioner.

Ms. Faria Hossain
Mr. Baisali Basu.
...for the State.

The challenge in the present revisional application relates
to the order dated 31st May, 2022 passed by the learned ACJM,
Alipore in S.L. No.554 of 2022.

Petitioner is directed to serve a copy of the revisional
application upon Ms. Baisali Basu, learned advocate, who ordinarily
appears on behalf of the State. Her appearance may be regularised
by the concerned authorities.

In the application under Section 156(3) of the Code of
Criminal Procedure the allegations were against the police officer
who was acting in discharge of his official duty, which according to
the petitioner, do not exonerate him from being implicated in a
criminal case. The petitioner contends that the order dated 31st
May, 2022 is not in accordance with law as the issue relating to
sanction is to be decided at the stage of taking cognizance.
Learned Magistrate has relied upon Anil Kr and Others V
M.K.Aiyappa and others [2013] 9 SCR 869 which is set out as

follows:

“Once it is noticed that there was no previous sanction, as already indicated in various judgments referred to hereinabove, the Magistrate cannot order investigation against a public servant while invoking powers under Section 156(3) Cr.P.C.”.

It appears that complainant Petitioner has not obtained mandatory sanction as required u/s 19(1) of the Prevention of Corruption Act prior to filing this application.

Also the Hon'ble High Court, Calcutta in a very recent judgment Dr. Nazrul Islam vs Basudeb Banerjee and others [CRM 625/2016] has reiterated that:

“Having regard to the subject matter by way of which the petitioner has attempted to invoke the provisions of Section 156(3) of the Code of Criminal Procedure against the public servants this Court is of the opinion that as the provision of Section 197 of the Code of Criminal Procedure has been incorporated in the statute, the same has been for a meaningful purpose of allowing the public servants to discharge their duties without fear or favour or without any anticipation of being harassed because of the rigorous of law.

Therefore, ordinarily a valid sanction would be required in a proceeding where the provisions of Section 156(3) Cr.P.C. are invoked against public servants.”

The finding of the learned Magistrate is that without a proper sanction there cannot be an order of investigation under

Section 156(3) of the Code of Criminal Procedure.

Petitioner submits that he has applied for sanction before the appropriate authority and the same is pending.

I direct that in case the sanction is not granted within a reasonable period of time, the petitioner would be at liberty to invoke the jurisdiction of the Hon'ble High Court under Article 226 of the Constitution of India. It is under the said jurisdiction it can be decided that the sanction should be granted or not. This Court do not find any illegality in the order passed by the learned Magistrate. The petitioner would be at liberty to revive his prayer under Section 156(3) of Cr.P.C. once such sanction is granted for the purposes of prosecution.

With the aforesaid observations, CRR 3057 of 2022 is disposed of.

Pending application, if any, is 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 of all requisite formalities.

(Tirthankar Ghosh, J.)