

05.12.2023

Item No.19

Ct.No.34

dc.

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION**

C.R.R. 4129 of 2022

In the matter of : **Kalyan Kumar Sur & Anr.** ... Petitioners.

Mr. Sekhar Kumar Basu,
Mr. Soubhik Mitter,
Ms. Rajnandini Das,
Mr. Karan Bapuli ... For the Petitioners.

Mr. Madhusudan Sur,
Mr. Manoranjan Mahata ... For the State.

So far as the documents are concerned in this case which is the subject-matter of grievance of the petitioners viz. Kalyan Kumar Sur and Sarthak Kumar Barma at this stage the same has been served and so far as the unrelieved documents are concerned, it has been submitted by the learned senior advocate that the same were received earlier as some of the documents have been received by the petitioners from the department of agriculture. At this stage there is no grievance regarding the relied upon and unrelieved documents of the prosecution which have been supplied or in custody of the present petitioners to be used in the proceedings before the learned trial court. The learned trial court earlier had the occasion to turn down the prayer on 16.09.2022 wherein the petitioners prayed for discharge.

Mr. Basu, learned senior advocate, appearing for the petitioners submits that the petitioners be granted another opportunity to address the learned trial court as all the documents were not available for hearing on the point of

discharge under the relevant provisions of Sections 239 or 227 of the Code of Criminal Procedure.

I have taken into account the materials produced by the State as well as the order passed in CRR 2806 of 2019 (Udayan Majumdar Vs. The State of West Bengal & Anr.). I have exhaustively dealt with the merits of the matter including the factum of participation of some of the accused persons in the case. I have also assessed the totality of the circumstances in the case restricted to appreciation for the purposes of discharge of each of the accused persons. The said order was passed on 08.03.2022. A Special Leave to Appeal (Crl.) No(s). 3198/2022 was preferred by the said Udayan Majumdar wherein the Hon'ble Supreme Court was pleased to observe as follows :

“The learned trial court is directed to frame charges and proceed with the trial by adhering to the provisions of Section 309 of the Code of Criminal Procedure.”

Having regard to the background of the present case which involves that only the relations of the portfolio holders or employees of the department of agriculture succeeded in the examination and the materials collected by the investigating agency in support of the case, I am of the view that no useful purpose would be served in the facts of the present case thereby asking the learned Special Court to rehear the application under Section 239 of the Code of Criminal Procedure. More so because of the fact that Sections 240 or 228 of the Code of Criminal Procedure for the purpose of progress in the case incorporates the phrase *“the Judge is*

of opinion that there is ground for presuming that the accused has committed an offence”.

Accordingly, the petitioners would be at liberty to rely upon the documents which are in their possession in course of trial of the case for rebutting the prosecution evidence. No interference is made in respect of the order dated 16.09.2022 in connection with Special Case No. 5 of 2014. The learned trial court would follow to the directions passed by the Hon’ble Supreme Court by adhering to Section 309 of the Code of Criminal Procedure.

With the aforesaid observations, the revisional application being CRR 4129 of 2022 is disposed of.

Pending connected application, if any, is consequently disposed of.

All concerned 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 with all requisite formalities.

(Tirthankar Ghosh, J.)