

03.01.2023

Sl. No. 09

Srimanta

Ct.No. 42

CRR/4569/2022

In the matter of : **Chandan Kumar Chowdhury**

Mr. Sudipto Moitra, Sr. Adv.,
Mr. Rajdeep Majumder, Adv.,
Mr. Soumyajit Das Mahapatra, Adv.,
Mr. Soumya Basu Roy Chowdhury, Adv.

...for the petitioner.

Having heard Mr. Moitra, learned Senior Counsel on behalf of the petitioner, this Court is of the view that the instant revision can be disposed of here and now. An order dated 19th November, 2022 passed by the learned Additional Sessions Judge, 2nd Fast Track Court at Howrah in Sessions Trial Court No. 38/2021 under Section 302/326/120B/34 of the Indian Penal Code and Sections 25 and 27 of the Arms Act is under challenge in the instant revision.

Suffice it to record that during investigation the Investigating Officer seized a CCTV footage to ascertain presence of the petitioner at the spot or not. After investigation Police submitted charge-sheet against the petitioner. At the time of supply of copies under Section 207 of the Code of Criminal Procedure the copy of the said CCTV footage was not supplied to the petitioner. The petitioner moved this Court in revision with a prayer directing the Trial Court to supply the copy of the said CCTV footage. A Coordinate Bench in CRR 943/2022 vide order dated 17th June, 2022 directed the Trial Court to supply a copy of CCTV footage as per Section 207 of the Code and in accordance with law. After the said footage was supplied, the petitioner had seen the said footage and found that he was not present at the scene of occurrence. Therefore, he filed an application

praying for discharge under Section 227 of the Code of Criminal Procedure on due consideration of the CCTV footage. The Trial Court refused to consider the said CCTV footage on the ground that the footage was not appended with proper certificate required under Section 65B of the Evidence Act.

It is needless to say that the Investigating Officer collected the CCTV footage as a piece of evidence to be used in the trial. The copy of the said footage was supplied to the petitioner under Section 207 of the Code of Criminal Procedure as per direction of this Court because of the fact that the prosecution will rely on such evidence during trial. The requirement of Section 207 of the Code of Criminal Procedure clearly suggests that an accused is not entitled to get the documents which the prosecution does not want to rely.

Only issue at this stage is to obtain a certificate under Section 65B of the Indian Evidence Act. It is the duty of the Investigating Officer to get the CCTV footage compared with the copies of the same by a technical person and obtain a certificate under Section 65B of the Indian Evidence Act to show that the footage corresponds with the photograph taken by the CCTV on a particular date and time. Thus, the Trial Court ought to have directed the Investigating Officer to get the CCTV footage with the copies of the same compared by a Scientific Officer having technical knowledge over the same.

Under such circumstances this Court is of the view that the learned Trial Judge committed an apparent error in rejecting the application filed by the petitioner praying for discharge without considering the CCTV footage.

The instant revision is, therefore, allowed directing the learned Trial Judge to get the CCTV footage and the copies thereof examined by a Scientific Officer through the Investigating Officer. After obtaining such report he shall

consider the CCTV footage and the materials collected against the accused persons and then dispose of the application filed by the petitioner afresh.

It is made clear that when charge-sheet has been filed under Section 120B of the Indian Penal Code, it is open for the learned Trial Judge to consider as to whether there remains evidence of criminal conspiracy to commit the principal offence from the case diary at the time of consideration of the petition for discharge.

(Bibek Chaudhuri, J.)