

12.03.2024

Item No.14
Ct.No.34
dc.

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION

C.R.R. 438 of 2024

In the matter of : **Md. Nuhiruddin** ... Petitioner.

Mr. Ranjan Roy,
Mr. N. G. Sarkar,
Mr. Ajay Debnath,
Mr. Devranjan Das,
Mr. Sujit Saha,
Mrs. Swagata Datta ... For the Petitioner.

Mr. Debasish Roy, Ld. P.P.,
Mr. Arijit Ganguly,
Mr. A.E. Molla ... For the State.

Mr. Ali Ahasan Alamgir,
Ms. Soma Mal,
Ms. Rabia Khatoon ... For the Opposite Party No.2.

Affidavit-of-service and supplementary affidavit filed on
behalf of the petitioner be kept with the record.

Report dated 24.02.2024 submitted on behalf of the
State be also kept with the record.

Learned advocate appearing for the petitioner submits
that in an application with a prayer under Section 154(3) of
the Code of Criminal Procedure, Magistrate has no authority
to pass an order under Section 156(3) of the Code of Criminal
Procedure. Further in the said order dated 21.06.2023
reference was made in respect of a communication of August
2023.

The learned advocate appearing for the petitioner
submits that the date which is appearing in the order dated
21.06.2023 itself reflects that the learned ACJM, Lalbagh did
not apply its mind and erroneously passed an order directing
for registration of the case and investigation to commence. It

has also been submitted that since the initial application was not filed under proper sections, the case should be dismissed.

Learned advocate for the petitioner additionally intended to address this Court on merits, but as is reflected from the report of the State that a Division Bench of this Court in CRM (A)/4532/2023 by the order dated 04.01.2024 was pleased to reject the prayer for anticipatory bail, I am not inclined to enter into the merits whether any offence has been made out or not. What this Court at this stage after rejection of an application for anticipatory bail while exercising its powers under Section 482 of the Code of Criminal Procedure can delve upon is regarding whether there is bar under any law for the case to proceed?

So far as the issue relating to Section 154(3) of the Code of Criminal Procedure is concerned which is appearing in the prayer of the application which was advanced before the learned ACJM, I am of the view that nomenclature will not affect the exercise of powers of a judicial authority. If from the allegations made in the contents it appeals to a court of law that investigation is required to be commenced, the judicial authority would be exercising its powers within its domain if under a different section of law, the powers are exhausted. As such, if the learned Magistrate has passed an order under Section 156(3) of the Code of Criminal Procedure, I do not find any illegality in the said order so passed on 21.06.2023.

So far as the issue relating to Section 91 of the Code of Criminal Procedure is concerned for supply of documents, the petitioner would be at liberty to supply such documents.

The arrest is prerogative of the investigating officer under the changed circumstances.

Having regard to the merits of the case, this Court at this stage can only direct the investigating agency to take the investigation to its logical conclusion.

Learned advocate for the petitioner submits that under Section 409 of the Indian Penal Code sanction is required. Such sanction would be required at the stage of taking cognizance of the offence not at the stage of the investigation of the case. Again, so far as the criminal breach of trust by a public servant is concerned, it would be a test to determine whether the act and/or action was in discharge of the official duty or in dereliction of the official duty. If the learned Special Court at the relevant point of time finds that there is dereliction of official duty, the issue relating to sanction may not be warranted at the stage of taking cognizance while considering the report under Section 173 of the Code of Criminal Procedure.

With the aforesaid observations, the revisional application being CRR 438 of 2024 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.)