

18.06.2024
rc/ct.no.34
Item No.08

CRR No. 2411 of 2024

In the matter of : Dr. Bholanath Pandey & Ors.

.....Petitioners

Mr. Sourav Chatterjee

Mr. Soumya Nag

Mr. Abhinav Rakshit

...for the Petitioners

Mr. Rudradipta Nandy

Ms. Sanjana Saha

...for the State

Copy of the application has been served upon the State.

Heard learned counsels for the parties.

The petitioners who are the Deputy Commissioner of Police, South-East Division, Kolkata Police, Assistant Commissioner of Police (IV), South-East Division, Kolkata Police, Additional Officer-in-Charge, Karaya Police Station and the Investigating Officer of Karaya Police Station Case No. 165 of 2023 dated June 21, 2023 have assailed the order passed by the learned Chief Judicial Magistrate, South 24-Parganas at Alipore on May 15, 2024 directing personal appearance of the petitioners primarily on the ground that the Investigating Officer of the case issued notice under Section 41A of the Code of Criminal Procedure upon the accused despite the fact that the allegations made out against the accused were under Section 326A of the Code besides Sections 506/509 of the Code.

Learned counsel has placed reliance on the authorities in

State of Uttar Pradesh & Ors. Vs. Dr. Manoj Kumar Sharma
reported in **(2021) 7 Supreme Court Cases, 806** and an

unreported judgment in the case of **The State of West Bengal** Vs. **Islam Sk. @ Sk. Islam & Anr.** in **SLP (Crl.) No. 3266 of 2024 delivered on April 23, 2024** wherein the Hon'ble Supreme Court has observed that public officers should not be called to court unnecessarily and if any particular issue arises for consideration before the Court and the learned advocate representing the State is not able to answer it is advised to write such doubt in the order and give time to the State or its officers to respond.

Learned counsel for the State has placed reliance on an unreported judgment in the case of **The State of West Bengal** Vs. **Ganesh Roy** in **SLP (Crl.) Nos. 5351-5352 of 2024 delivered on April 22, 2024** wherein the Hon'ble Court reiterated the observation made in the authority in the State of Uttar Pradesh & Ors. (supra).

It shall be useful to reproduce paragraph 21 of the authority in State of Uttar Pradesh & Ors. (supra)-

“21.Thus, we feel, it is time to reiterate that public officers should not be called to court unnecessarily. The dignity and majesty of the court is not enhanced when an officer is called to court. Respect to the court has to be commanded and not demanded and the same is not enhanced by calling the public officers. The presence of public officer comes at the cost of other official engagement demanding their attention. Sometimes, the officers even have to travel long distance. Therefore, summoning of the officer is against the public interest as many important tasks entrusted to him get delayed, creating extra burden on the officer or

delaying the decisions awaiting his opinion. The court proceedings also take time, as there is no mechanism of fixed time hearing in courts as of now. The courts have the power of pen which is more effective than the presence of an officer in court. If any particular issue arises for consideration before the court and the advocate representing the State is not able to answer, it is advised to write such doubt in the order and give time to the State or its officers to respond.”

It appears that Investigating Officer, upon receipt of report of the forensic expert prima facie observed that there was no ingredient of offence under Section 326A of the Indian Penal Code against the accused. Since the other allegations were under Section 506/509 of the Code, the Investigating Officer issued notice under Section 41A of the Code of Criminal Procedure upon the accused. The learned Court, in the order impugned, granted bail to the accused on an observation that prima facie case under Sections 506/509 of the Code was made out against him. In other words, the learned Court has also held that there was no prima facie ingredient against the accused under Section 326A of the Code. However, learned court appears to have been disturbed by the fact that instead of learned Court holding that there was no ingredient of offence under Section 326A of the Code against the accused the said observation was by the Investigating Officer during investigation of the case. Charge sheet is yet to be filed. The learned Court directed the petitioners to appear before him

and submit reports explaining the reasons for such acts done by them.

In view of repeated observations made by the Hon'ble Supreme Court to the effect that the public servants should not be called to Court unnecessarily and a report be called from them asking them to explain the issue which could have arisen before the Court for consideration, this Court is inclined to hold that calling for reports from the petitioners directing them to explain their acts as observed by the learned Magistrate in the order impugned shall suffice and their personal appearance before the Court is not required. Learned trial court is at liberty to act on the reports, in accordance with law.

In view of the above, the portion of the impugned order directing the petitioners to appear before the learned Chief Judicial Magistrate, South 24- Parganas at Alipore be set aside/quashed. The remaining part of the order is affirmed.

The petitioners are directed to submit reports before the learned Court in terms of the order impugned within one week from date.

The revisional application being CRR No. 2411 of 2024 is disposed of accordingly.

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 with all requisite formalities.

(Suvra Ghosh,J)