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**CRR 3661 of 2023
(CRAN 1 of 2024)**

**In Re : Biswajit Mukherjee
... Petitioner.**

**Mr. Mayukh Mukherjee
Mr. Kaustav Lal Mukherjee
Ms. Sagnika Banerjee
Ms. Aishwarya Bazaz
Ms. Sarmistha Basat
.... For the Petitioner
Mr. Sandip Chakraborty
Ms. Pallavi Priyadarshee
.... For the State**

By consent of the parties the revisional application is taken up for consideration along with the application.

Heard learned counsels for the parties.

The petitioner seeks stay of further proceedings being G.R. case no 1988 of 2017 pending before the learned Chief Metropolitan Magistrate, Kolkata presently redesignated as learned Chief Judicial Magistrate, Kolkata and quashing of the order dated 11th September, 2023 passed by the said learned Magistrate on the ground that though no *prima facie* case has been made out against the petitioner the application filed by him under Section 227 of the Code of Criminal Procedure has been turned down by the learned trial Court without assigning any reason therefor. The petitioner has not pressed the issue of limitation under Section 239 of the Code and the same need not be discussed.

Learned counsel for the petitioner has taken this Court to the charge-sheet submitted on 7th August, 2021 against the petitioner and two others wherein the investigating officer has recorded that the petitioner has created two alleged face book pages in the name of Dona Ganguly and Sana Ganguly but there is no objectionable content in the face book pages. Nevertheless, charge-sheet was submitted against the petitioner under Sections 66/66C/67/84B read with Section 43 of Information Technology Act, 2000. The petitioner came up before this Court in a criminal revision being CRR 2637 of 2021 wherein by an order passed on 8th June, 2022 this Court observed that the submissions made on behalf of the petitioner with regard to applicability of Section 67 of the Act of 2000 contained substantial force and the view of learned counsel was somewhat substantiated in the documents placed by the prosecution. However, this Court directed the learned trial Court to assess the same at the appropriate stage of trial.

The petitioner filed an application under Section 227 of the Code of Criminal Procedure before the learned trial Court seeking his discharge which was turned down. Learned counsel has referred to the relevant penal sections slapped upon him in the charge-sheet in submitting that the offences laid down therein are not applicable in so far as the petitioner is concerned.

Learned counsel for the State vehemently opposes the contention of the petitioner and submits that the order impugned dated 11th September, 2023 passed by the learned

Magistrate is a reasoned order and was passed upon consideration of the material on record.

I have considered the rival contentions of the parties and material on record.

Since this Court has earlier expressed doubt with regard to the applicability of Section 67 of the Act of 2000 in so far as the petitioner is concerned, the same need not be reiterated once again. By the order impugned learned trial Court has only recorded that the investigating officer has found *prima facie* material of incriminating nature against all the accused persons, one of whom has pleaded guilty and accordingly the other accused are required to face trial. Learned Magistrate has rejected the prayer of the petitioner stating that he has considered the incriminating material against him. The order does not demonstrate that the penal sections thrust upon the petitioner vis a vis *prima facie* role of the petitioner was taken into consideration by the learned trial Court in considering the application under Section 227 of the Code. No assessment regarding applicability of the provisions as directed by this Court earlier was made by the learned trial Court, at least the same is not reflected in the order impugned. The order impugned is absolutely cryptic and bereft of any reason for rejection of the petition under Section 227 of the Code and as such, is liable to be set aside.

Accordingly, the revisional application being CRR 3661 of 2023 is allowed.

The connected application being CRAN 1 of 2024 is disposed of.

The order impugned dated 11th September, 2023 passed by the learned Chief Metropolitan Magistrate, Kolkata presently redesignated as learned Chief Judicial Magistrate, Kolkata in G.R. case no. 1988 of 2017 is set aside.

Learned Magistrate is directed to reconsider the application under Section 227 of the Code filed by the petitioner and pass a reasoned and speaking order in the light of the observation made in this order as expeditiously as possible, preferably within a period of one month from the next date of hearing fixed before him.

Learned Magistrate shall proceed with the case after disposal of the application under Section 227 of the Code.

Urgent certified website copy of the order, if applied for, be given to the parties on compliance of requisite formalities.

(Suvra Ghosh, J.)