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16.07
2024
Ct. No. 237

C.R.R. 4637 of 2022
Priya Ghosal
Vs.
The State of West Bengal & Ors.

Ms. Priya Ghosal

...Petitioner in Person

Mr. Debasish Roy

Mr. Saryati Dutta

Ms. Manasi Roy

...For the State

The present application has been preferred against the order dated 16th July, 2022, whereby the learned Judicial Magistrate, 4th Court at Barrackpur, was pleased to reject the application of the petitioner filed under Section 216 of the Code of Criminal Procedure in the proceeding, being G.R. Case No. 1371 of 2021.

Complainant, who appeared in person before the Court submitted that the Investigating Officer did not cooperate with the petitioner. He did not seize the blood stained wearing apparels of the mother of the petitioner nor did he seize the weapon used at the time assault. She further submits that the blood-stained cloth was not sent to Forensic Science Laboratory (F.S.L). She requested the Investigating Officer for sending the same to F.S.L but he turned a deaf ear to it. The petitioner also sent letter to the Superior Authorities, stating her grievances and also attitude of the Investigating Officer but they also did not extend their co-operation with the petitioner. She further submits that on 5th April, 2021, she made an application under Section 157(2) of the Cr.P.C. The Court below by an order dated 5th April, 2021,

observed that there was no progress in the investigation and the weapon has not yet been seized and even the statement of the de facto complainant/victim under Section 164 of the Cr.P.C. has also not been recorded. She further submits that even after passing the order, the Investigating Authority did not cooperate with the petitioner and on the contrary they have submitted a charge-sheet under Section 325/354/506 of the Indian Penal Code. In the above background, petitioner made the said application under Section 216 of the Cr.P.C. before the Court below for adding charge under Section 326 and 307 with the present proceeding. However, Court below after hearing both the parties passed the impugned order.

Mr. Saryati Dutta, learned Counsel appearing on behalf of the State submits that the order passed by the Court below is absolutely justified. He further submits that the charge can be altered/charge can be added at any stage of the proceeding. He further submits that only examination of PW-1 is completed and the cross-examination of such PW-1 is scheduled on 24th July, 2024. Accordingly it is too early to make a prayer for addition of any charge and for which court below rightly held that such prayer can be considered at proper stage. He further submits that the order impugned does not call for any interference by this Court.

Having considered the facts and circumstances of the case and also the order impugned I find that the Court below observed that

though there is a very thin line to be considered in between the provision under Section 325 and Section 326 of the Indian Penal Code but the same can be ascertained only upon taking into consideration the evidence of all the witnesses stated in the charge sheet witness list. He further observed that even for addition of Section 307 of the Indian Penal Code, intention is an important ingredient. The same can be ascertained only upon taking into consideration the evidence of the witnesses stated in the charge sheet witness list.

Having considered the facts and circumstances of the case, I do not find any perversity in the finding of the court below that until sufficient materials are available justifying addition or alteration of charge, it would not be proper to alter or add charge. Section 216(1) of Cr. P.C makes it clear that court may alter/add to any charge at any time before judgement is pronounced. In the present case up till now no document or evidence produced by the prosecutor or defacto complaint before the court subsequent to framing of charge that could be looked into to decide whether additional charge is to be framed or not. An addition of charge is warranted based on any such materials only on recording such evidence.

In such view of the matter, I do not find any merit in the present application.

The application, being CRR 4637 of 2022 is accordingly dismissed.

However, this order of dismissal will not preclude the petitioner herein to make further prayer for addition or alteration of charge against the opposite parties/accused persons at any appropriate stage of the trial.

Urgent Photostat certified copy of this order, if applied for, be given to the parties, on priority basis, upon compliance of all necessary formalities.

(Ajoy Kumar Mukherjee, J.)