

06
13.05.2024
Ct. No.3
RS

**IN THE HIGH COURT AT CALCUTTA
Circuit Bench at Jalpaiguri
Criminal Revisional Jurisdiction
Appellate Side**

CRR No. 41 of 2023

BALARAM HELA

-VS-

STATE OF WEST BENGAL AND ANR

None appears on behalf of the either of the parties.

It is found from the record that the matter was listed on 13.12.2023, 23.04.2024 and 01.05.2024, in all the above mentioned dates none appears on behalf of the either of the parties and for the interest of justice, the case was adjourned from time to time. Today also when the matter is called, none appears on behalf of the either of the parties. No accommodation is sought for.

It is found from the record that this is an application under Section 482 read with Section 401 of the Code of Criminal Procedure, 1973 praying for transfer of the GR Case No.2515/2022 in connection with Samuktala P.S. Case No.294/2022 dated 06.11.2022 under Section 406/422 of the Indian Penal Code pending before the Additional Chief Judicial Magistrate at Alipurduar.

In the application it is alleged that the petitioner has been falsely implicated in the criminal case initiated by the opposite party no.2. It is further mentioned that the petitioner is working in the Indian Army as Sepoy and in view of the offence as alleged against him, the petitioner ought to have delivered to the Commanding Officer of the Unit to which the petitioner belongs in terms of Section 475 of the Code of Criminal Procedure read with Rule 3 of the Government of India Rules framed under Section 475 of the Code of Criminal Procedure.

Section 475 of the Code of Criminal Procedure reads as follows : -

“475. Delivery to commanding officers of persons liable to be tried by Court-martial. – (1) The Central Government may make rules consistent with this Code and the Army Act, 1950 (46 of 1950), the Navy Act, 1957 (62 of 1957), and the Air Force Act, 1950 (45 of 1950), and any other law, relating to the Armed Forces of the Union, for the time being in force, as to cases in which persons subject to military, naval or air force law, or such other law, shall be tried by a Court to which this Code applies or by a Court-martial, and when any person is brought before a Magistrate and charged with an offence for which he is liable to be tried either by a Court to which this Code applies or by a Court-martial, such Magistrate shall have regard to such rules, and shall in proper cases deliver him, together with a statement of the offence of which he is accused, to the commanding officer of the unit to which he belongs, or to the commanding officer of the

nearest military, naval or air-force station, as the case may be, for purpose of being tried by a Court-martial.

Explanation. – In this section –

- (a) “unit” includes a regiment, corps, ship, detachment, group, battalion or company.
- (b) “Court-martial” includes any tribunal with the powers similar to those of a Court-martial constituted under the relevant law applicable to the Armed Forces of the Union.

(2) Every Magistrate shall, on receiving a written application for that purposes by the commanding officer of any unit or body of soldiers, sailors or airmen stationed or employed at any such place, use his utmost endeavours to apprehend and secure any person accused of such offence.

(3) A High Court may, if it thinks fit, direct that a prisoner detained in any jail situate within the State be brought before a Court-martial for trial or to be examined touching any matter pending before the Court-martial.”

In the present case, a private person has made a complaint and on the basis of the complaint, enquiry was conducted and a *prima facie* case has been made out against the petitioner. Accordingly, the police has submitted charge sheet against the petitioner for the alleged offence. The petitioner himself has filed the present application praying for transfer of this case from the learned Court of Chief Judicial Magistrate, Alipurduar to the Commanding Officer on the ground that the petitioner

is working in the Indian Army as Sepoy and the petitioner intends to take the shelter of Section 475 of the Code of Criminal Procedure.

Considered the application. Perused the provisions of Section 475 of the Code of Criminal Procedure.

This Court finds that the petitioner suo motu has filed an application for transfer of the case from the learned Court of Chief Judicial Magistrate, Alipurduar to the Commanding Officer on the ground that he is working in Indian Army as Sepoy. There is no request from the concerned authority i.e. from the Commanding Officer of the petitioner for referring the matter or sending the matter to the Commanding Officer for initiation of Court-martial against the petitioner.

In view of the above, this Court finds that the application filed by the petitioner is misconceived and accordingly, CRR No.41 of 2023 is dismissed.

(KRISHNA RAO, J.)