
(2019) 07 CAL CK 0055

In the Calcutta High Court

Case No : Criminal Revision (CRR) No. 454 Of 2019

Jayanta Chowdhury

APPELLANT

Vs

State Of West Bengal & And Anr

RESPONDENT

Date of Decision : 15-07-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 173, 190, 401, 482
Indian Penal Code, 1860 — Section 34, 406, 420, 468, 471
Constitution Of India, 1950 — Article 227

Citation : (2019) 07 CAL CK 0055

Hon'ble Judges : Madhumati Mitra, J

Bench : Single Bench

Advocate : Ayan Basu, Jayanta Samanta, Karunamoyee Samanta, Sumit Routh, Sayanti Santra

Final Decision : Disposed Off

Judgement

Madhumati Mitra, J

This is an application under Article 227 of the Constitution of India and under Section 482 read with Section 401 of the Code of Criminal Procedure,

1973 filed by the petitioner challenging the impugned order dated 28.09.2018, passed by the Learned Judicial Magistrate, 3rd Court, Malda, in

G.R.Case No.3792 of 2013 arising out of English Bazar Police Station Case no.1074 of 2013 dated 20.12.2013 under Sections 406/420/468/471/34 of

the Indian Penal Code.

By the impugned order Learned Magistrate rejected the prayer of the petitioner for discharge.

Facts which are necessary for disposal of the present application are as follows:

Opposite party no.2 lodged a written complaint against the petitioner and two

others alleging that they taking the advantage of his faith executed false documents and grabbed his landed property situated at no.03 Govt. Colony for promoting business.

On the basis of the said written complaint English Bazar, P.S.Case No. 1074/13 dated 20.12.2013 under Sections 406/420/468/471/34 of the Indian

Penal Code was started against the present petitioner and two others.

After completion of investigation charge-sheet was submitted against the petitioner and others for commission of alleged offences under Sections

406/420/468/471/34 of the Indian Penal Code.

On 28.09.2018, the accused persons prayed for their discharge from the case and the said prayer of the accused was rejected by the Learned

Magistrate on the ground that after submission of charge-sheet Learned Chief Judicial Magistrate, Malda, took cognizance of the offences after

perusing the charge-sheet and other relevant documents on 03.09.2014 and the said order of taking cognizance of the offences was not challenged

before any higher forum. Learned Magistrate has also opined that the order of taking cognizance is still in force and the Learned Magistrate could not

sit in appeal against the said order dated 03.09.2014 passed by the Learned Chief Judicial Magistrate. Accordingly, the Learned Magistrate rejected

the prayer for discharge of the accused persons.

The said order dated 28.09.2018 is under challenge.

Impugned order passed by the Learned Magistrate has been assailed on various grounds. It has been contended on behalf of the petitioner that the

reasons assigned by the Learned Magistrate for rejecting the prayer of the petitioner to discharge are not at all tenable in law. Learned Advocate

appearing for the petitioner has forcefully submitted that the Learned Magistrate has failed to exercise the jurisdiction vested in him and the impugned

order is liable to be set aside.

Section 190 of the Code of Criminal Procedure speaks about taking of cognizance by the Magistrate. Section 190 of the Code of Criminal Procedure

reads as follows:

â??Cognizance of offences by Magistrates. â?"(1) Subject to the provisions of the Chapter, any Magistrate of the first class, and any Magistrate of

the second class specially empowered in this behalf under sub-section (2), may

take cognizance of any offence-

(a) upon receiving a complaint of facts which constitute such offence:

(b) upon a police report of such facts;

(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub-section (1) of such offences as are

within his competence to inquire into or try.â??

Taking of cognizance means to become aware of and when used with reference to a Court or Judge to take judicial notice. In the instant case, from

the order of the Learned Magistrate, it appears that the Learned Chief Judicial Magistrate took cognizance of the offences on the basis of the

averments made in the charge-sheet under Section 173 of the Code of Criminal Procedure. Generally when a Magistrate takes cognizance of the

offences on the basis of charge-sheet, it is not open to him to appreciate the materials placed with the charge-sheet. At the time of taking cognizance,

the Magistrate is not required to pass any speaking order and the Magistrate is not required to analyze the evidence produced at the time of taking

cognizance. After taking of cognizance of the offences on basis of police report or charge-sheet, the accused may pray for discharge. An order of

discharge can be passed by the Magistrate before framing of charge against the accused in appropriate cases after considering the materials placed

with the charge-sheet or considering the materials in the case diary. At the time of considering the prayer for discharge, the Magistrate is to find out

only whether there is prima facie case against the accused. If the Magistrate after perusing the charge-sheet and the materials in the case diary finds

that there is prima facie case against the accused, then the Magistrate will reject the prayer for discharge of the accused. The Magistrate, has to pass

a speaking order assigning the reason in support of his order.

In the case at hand, the Learned Magistrate rejected the prayer of the petitioner for discharge on misconception of law. The reasons as assigned by

the Learned Magistrate are not tenable in law.

The impugned order passed by the Learned Magistrate requires to be interfered with. Accordingly, the impugned order is set aside.

Learned Magistrate is directed to hear the matter afresh and to dispose of the application for discharge of the petitioner in accordance with law by

passing a speaking order after giving opportunity of being heard to both the parties within a period of six months from the date of communication of

the copy of the order.

Case diary be handed over to the Learned Advocate appearing for the State immediately.

Urgent Photostat certified copy of this judgment, if applied for, be given to the parties, upon compliance with all necessary formalities.