

In the Court of Special 1st Court, Birbhum at Suri

Present: Shri Subhrajit Basu (WB01238)

Judge, 1st Special Court,
Suri, Birbhum.

Special Case No. 01 of 2021
(CNR No. WBBB01-000976-2021)

Order No. 16
06.12.2021

Accused Safiul Alam is produced from J/C.

Today is fixed for hearing of the discharge petition dated 10.11.2021 filed by the accused and hearing regarding framing of charge.

Mr. Somenath Mukherjee, learned Advocate for the defence is present. Mr. Bibhas Chatterjee, learned Special Public Prosecutor is also present.

At the outset, it is pointed out by the learned Advocate for the accused that the name of the accused has been wrongly written on the production warrant slip as 'Saiful Alam' in place of 'Safiul Alam' and the same may be corrected as it is creating hindrances in his getting medical treatment.

Prayer is considered and allowed.

Let the name of the accused on the production warrant slip be corrected as 'Safiul Alam' at once.

The discharge petition dated 10.11.2021 filed by the accused is now taken up for hearing at first.

Heard both sides regarding the discharge petition.

Learned Advocate for the accused has mainly raised two points in support of the discharge petition during his arguments. Firstly, he argued that since the accused is a government employee and the alleged acts were done in discharge of official duty, sanction is required under Section 197 of the Code of Criminal Procedure, 1973 (for short 'the Code') before framing of charge. Secondly, he submitted that the prosecution has filed charge-sheet against this accused under Sections 403/406/409/417 I.P.C. and Sections

66C/66D of the Information Technology Act, 2000 in this case, but from the materials collected by the prosecution during investigation, none of the ingredients of the said offences are *prima facie* forthcoming and accordingly, the accused is entitled to an order of discharge in this case.

On the other hand, learned Special Public Prosecutor submitted that sanction under Section 197 of the Code is not required in this case. In this regard, the learned Special Public Prosecutor further submitted that the acts done by the accused in misappropriating government money meant for beneficiaries of MGNREGA scheme cannot be said to be done by him in discharge of his official duty. He further submitted that Section 197 of the Code applies at the stage of taking cognizance and the said stage is already past in this case and at the stage of framing of charge, this issue cannot be raised.

C.D. is produced.

Perused the materials in the C.D. as well as charge-sheet submitted against the accused person.

In this case, according to the prosecution, one Nazmul Haque Choudhury, Superintendent of Post Offices, Birbhum Division lodged a written complaint dated 20.07.2020 with the Inspector-In-Charge, Suri P.S., *inter alia*, alleging that the accused, who is a permanent employee of Postal Department of India and had been working as the Office Assistant, Birbhum Divisional Post Office and System Assistant, Birbhum Division, since 2013 in collaboration with other persons misappropriated huge amount of government money and committed criminal breach of trust, while being entrusted with the work of transferring funds to the individual bank accounts of beneficiaries of MGNREGA scheme from the Government Account of Suri Head Post Office and while doing so, the accused illegally transferred government money to different individual Savings Bank Accounts illegally created by him in the

names of 1) Rabiya Khatun, 2) Md. Firoj, 3) Sk Ezarul Haque, 4) Sk Md. Islam and 5) Sk Amir Ali and 6) Sk Aman Ali. It is the further case of the prosecution that the accused thereafter withdrew the said amounts from the said accounts through ATM and CCTV footage of ATM counters also show the involvement of the accused in this matter. According to the prosecution, during investigation it has further been revealed that an amount of Rupees 1.33 Crore has been misappropriated by the accused when he was posted as Office Assistant at Birbhum Divisional Post Office and System Assistant Birbhum Division and accordingly, charge-sheet against him has been filed after completion of investigation.

Upon going through the materials in the C.D., this Court finds that *prima facie* there are materials to show the involvement of the accused for proceeding against him in this case. Furthermore, it is the settled law that no sanction is required under Section 197 of the Code when the allegation against the accused, who is a government servant, is of misappropriation of government money and criminal breach of trust. Needless to mention that misappropriation of government money or criminal breach of trust cannot be said to be acts done 'in discharge of his official duty' within the meaning of Section 197 of the Code.

In such view of the matter, the discharge petition filed by the accused is dismissed.

Now, the matter is taken up for the hearing regarding framing of charge.

Heard both sides.

The learned Special Public Prosecutor proposes to frame Charge under Sections 403/406/409/417/420 I.P.C. and Sections 66/66C/66D of the Information Technology Act, 2000.

However, upon going through the materials in the C.D., this Court finds that there are *prima facie* materials to frame charge against the accused under Sections 403/409 I.P.C. and Sections 66/66C/66D of the Information Technology Act, 2000.

Accordingly, this Court frames charge under Sections 403/409 I.P.C. and Sections 66/66C/66D of the Information Technology Act, 2000 against the accused and the charge is read over and explained to the accused and the accused is asked whether he pleads guilty of the offences charged or whether he claims to be tried. To this, the accused replied that he intends to challenge certain earlier orders passed by this Court before the Hon'ble High Court and as such, he is not in a position to take a plea in this case.

In this regard, it may be noted that Section 228 (2) of the Code, *inter alia*, provides that after the Court frames charge against the accused, the charge shall be read over and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried. Section 229 of the Code provides that if the accused pleads guilty, the Judge shall record the plea and may in his discretion, convict him thereon. Section 230 of the Code, *inter alia*, provides that if the accused refuses to plead, or does not plead, or claims to be tried or is not convicted under Section 229, the Judge shall fix a date for the examination of witnesses.

In this case, the statements of the accused when the Court read over and explained the charge framed against him amounts to his refusal to plead within the meaning of Section 230 of the Code and since he has also not pleaded guilty to bring the case within the meaning of Section 229 of the Code, this Court has to proceed on the basis that by refusing to plead, the accused in fact claims to be tried within the meaning Section 228(2) of the Code.

As such, in terms of Section 230 of the Code, the matter is fixed on **19.01.2022** for examination of C.S.W. 3 as per prayer of the prosecution.

Prosecution is directed to issue summons accordingly.

At this stage, learned Special Public Prosecutor files a petition stating that after the contents of the charge was read over to the accused, he did not give any reply as to whether he pleaded guilty or not. It is further stated in the petition that from the record it would appear that the accused created all sorts of impediments against framing of charge though the prosecution wants to proceed with the trial at the earliest. As such, by this petition, the prosecution has prayed for passing necessary order by this Court for ends of justice and equity. Copy of the petition served upon the learned Advocate for the defence who objected to the prayer.

Along with the aforesaid petition, the Special Public Prosecutor at this stage has also filed a copy of a purported Sanction Order issued by the Superintendent of Post Offices, Birbhum Division, Suri dated 08.04.2021 regarding prosecution of the accused in this case.

However, since this Court has already fixed the matter for examination of witness after framing of charge against the accused, no order need be passed regarding the instant petition of the prosecution and accordingly, the same stands dismissed as infructuous.

Accused is remanded to J/C.

To-date (i.e. **19.01.2022**) for production of accused and evidence.

Dictated & corrected
by me.

Sd/- Subhrajit Basu
Judge, 1st Special Court,
Birbhum at Suri.

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