

In the Court of the Judge, 2nd Special Court, Calcutta
Special Case No.02 of 2024 (Computer Registration No.02 of 2024)
CNR No. WBCS01-000119-2024
Present :- Ananta Kumar Singha Mahapatra (J.O Code-WB00902).

Order No.08
04.06.2024

Accused Kanchan Kumar (A-1) and Raj Kumar Roy (A-2) are produced from judicial custody.

The learned advocates for the accused persons are present.

The learned Public Prosecutor is also present.

The Investigating officer is also present with the case diary.

Today is fixed for passing order in respect of the discharge application dated 02.04.2024 filed by accused Raj Kumar Roy (A-2), herein after referred to as the said application, in short.

I have heard both sides at length. Perused the said application, the case record and the case diary. Considered.

By filing the said application A-2 has contended that he had no knowledge about the agency of A-1 with Syndicate Bank or Canara Bank. That no material has been collected by the Investigating Officer to show that A-2 was the authorized sub agent duly acknowledged and approved by any bank. That under the policy of the central government, the Syndicate Bank was amalgamated into Canara Bank with effect from 01.04.2020 and since then Syndicate Bank is nonest in the eye of law. That there is no material to show that A-1 was appointed as daily collection agent under the scheme of PIGMY/ NNND of the Syndicate Bank. There is no material to show that after amalgamation of Syndicate Bank with Canara Bank, A-2 was appointed as sub agent of Canara Bank. The learned advocate for A-2 further submitted that if A-2 be considered as sub agent of the bank, then he will be treated as public servant as defined under Section 21 of the Indian Penal Code, 1860, hereinafter referred to as the IPC, in short. That in the instant case no sanction under Section 197 of the CrPC was obtained by the Investigating Officer to proceed against A-2. That Canara Bank has never issued any agency/ appointment letter in the name of any accused persons. The learned advocate for A-2 further submitted that in the case diary there are is material for presuming that the accused has committed the alleged offence. He further referred to a decision of the Hon'ble Apex Court reported in (1979) 3 SCC 4, Union of India Vs. Prafulla Kumar Samal and

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submitted that the court has power to shift and weigh the evidence for limited purposes of finding out whether or not a prima facie case against the accused persons has been made out. He also referred to another decision of the Hon'ble Apex Court in (2010) 9 SCC 368, Sajjan Kumar Vs. CBI and submitted that the court cannot act merely as a post office or a mouth piece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court, etc.

In the said application the learned advocate for A-2 has cited many judgments of the Hon'ble Apex Court. The principle as laid down in those judgments is that if on examination of the materials on record the court does not find sufficient grounds for proceeding against the accused, he must discharge him. On the other hand if after such consideration and hearing, he is satisfied that a prima facie case is made out against the accused, he must proceed to frame the charge as required under section 228 of the CrPC.

The learned public prosecutor contested the said application by raising verbal objection and submitted that there are sufficient materials in the case diary to frame charge against the accused persons under sections 467/468/469/471/409/420/406/120B of the IPC. He further submitted that the investigating officer has collected necessary documents to show the agency of A-1 under the then Syndicate Bank now amalgamated into Canara Bank. He further submitted that there is sufficient materials to show that A-2 was appointed as agent by A-1 to collect money from the public on behalf of A-1 under the PIGMY/ NNND scheme. That on perusing the case diary it will appear that after collecting the money from the public, the accused persons have not deposited the said amount with the bank and have committed criminal breach of trust with the public from whom they collected the money.

On perusing the case diary it prima facie appears that A-1 was appointed as an agent of the then Syndicate Bank now amalgamated into Canara Bank to collect money from the public under the PIGMY/ NNND

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scheme. That A-2 has collected huge amount of money on behalf of A-1 from various customers such as Sachin Partani, Gulab Chand Jaiswal, Pramod Manchada, Hari Narayan Partani, Bhagwandas Partani, Abhimanyu Kumar Chaudhury, Rupa Manchada, Ashu Rekhi, Dinesh Kumar Srivastava, Ved Prakash Shaw, Sunil Kumar Bera, Rajesh Kumar Shaw, Hari Prakash Shaw, Ranjit Bhowmick, Guddu Shaw, etc. It further appears that A-1 and A-2 have not deposited the said amount in the bank. The report of the handwriting expert goes to show that the cash collection receipts are in the handwriting of A-2. A report regarding authentication of the seized cash collection receipts has been collected from Canara Bank and the same goes to show that those money receipts are not genuine. The materials present in the case dairy, prima facie, goes to show that the accused persons committed criminal conspiracy and collected money from the different customers of the bank by using forged and fabricated receipts as genuine but did not deposit the money into the bank and misappropriated Rs.56,77,500/- or more causing wrongful loss to the customers and thereby committed criminal breach of trust and cheating.

It is not the case of the prosecution that the sub-agency of A-2 under A-1 was within the knowledge of the bank or that the same was authorised by the bank. As per the case of the prosecution, A-2 was appointed to collect money from the customers by and on behalf of A-1.

Regarding the sanction under Section 197 of the CrPC, I am of the opinion that A-1 was not a public servant not removable from his office save by or with the sanction of the Government. As such, the sanction under Section 197 of the CrPC is not applicable for A-1. It is not the case of the prosecution that A-2 is a recognised sub agent and as such there is no necessity of obtaining sanction against him also.

In the case of Sajjan Kumar supra, the Hon'ble Apex Court has been pleased to observe at the stage of consideration of charge, there cannot be a roving enquiry into the pros and cons of the matter and weigh the effects as if he has conducted a trial. That if on the basis of the material on record, the court could form opinion that the accused might have

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committed the offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

Thus, on examination of the materials on record and hearing both sides, I am satisfied that a prima facie case to frame charge is made out against the accused persons. Accordingly, I find no merits in the said application and the same is liable to be rejected.

Hence, it is, ordered,

that the the discharge application dated 02.04.2024 filed by accused Raj Kumar Roy is rejected on contest.

Now, the case record is taken up for framing of charge.

Heard both sides. Perused the materials on record and the case Diary. Considered.

The learned Public Prosecutor opens the case by describing the charges punishable under Sections 467/468/469/471/409/420/406/120B of the IPC against the accused persons and he proposes to examine the charge sheeted witnesses, by the evidence of which aforesaid charge would be proved.

Prima facie it appears that Kanchan Kumar (A-1) and Raj Kumar Roy (A-2) have committed the offence punishable under Sections 467/468/469/471/420/406/120B of the IPC. That Kanchan Kumar (A-1) has additionally committed the offence punishable under Section 409 of the IPC.

Charge is accordingly framed in two separate prescribed forms and the contents thereof are read over and explained to the accused persons in Bengali to which they pleaded not guilty and claimed to be tried.

Heard both sides in order to ascertain if they wish to carry out admission of any document under Section 294 of the Cr.P.C. The accused refused to carry out any such admission.

To **25.06.2024 and 26.06.2024** for examination of charge sheeted witness no.1.

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Issue summons accordingly.

To date for production of accused Kanchan Kumar and Raj Kumar Roy.

Dictated and corrected by me

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