

Special Case No. 15/11

Order No. 60

Dtd. 23.02.17

Out of 07 accused persons accused Biswajit Saha, accused K. L. Roy, accused Baharuddin Ahmed, accused P. Gogoi and accused T. Ahmed on c.b. are absent by petitions represented through their respective lawyers. No step is taken on behalf of A-2 Dipak Marda and A-3 Raj Gopal Kankani. Surety is directed to produce the above named unrepresented accused persons failing which necessary order will be passed.

One discharge petition of accused K. L. Roy u/s 239 Cr. P.C. filed on 21.01.14 is taken up for hearing.

Perused the petition and objection thereto. Heard the Ld. PP in-charge and the Ld. Defence Counsel.

Ld. Advocate for the accused person has drawn my attention to the fact that Charge Sheet in this case against the present accused person and others was submitted on 25.09.10 u/s 13 (1) (c) & (d) r/w section 13 (2) of the P.C. Act, 1988 r/w 120B inter-alia but the competent authority accorded sanction for prosecution on 17.09.10 i.e. prior to the submission of charge-sheet. He has referred two decisions of the Supreme Court in this connection namely AIR 1979 SUPREME COURT 677 and AIR 1998 SUPREME COURT 2985 to show that sanction of prosecution submitted before the submission of charge-sheet is not a valid sanction and as such the court cannot take cognizance thereon u/s 19 of P.C. Act, 1988. This is a ground of discharge of the accused person on law point u/s 239 Cr. P.C.

I have gone through the above referred decisions and submission and contention on both sides.

I find from the record that F.I.R. was lodged in this case on 21.01.09 and investigation was completed by 17.09.10 but the formal charge-sheet was submitted before the court on 25.09.10 with Sanction Order of dtd. 17.09.10. The sanctioning authority had all the materials placed before him to accord sanction. In the above referred two Supreme Court decisions sanction was accorded when the investigation was incomplete. So the above decisions are not applicable to this case to come to the conclusion that sanction is vitiated for submitting the same before completion of investigation.

Accordingly, I do not accept the contentions of the Ld. Advocate of the accused person in favour of discharge u/s 239 Cr. P.C. Ld. Advocate for the accused person did not rely on other factual aspects of the case in support of the discharge petition.

The discharge petition is therefore rejected. Fix – **22.05.17** for consideration of charge. All the accused persons must be present on the date fixed.

Dict. & Corr. By me:-

Judge, 3rd Special
(CBI Designated) Court,
Bankshall Court, Calcutta