

IN THE MUNICIPAL MAGISTRATE, 2nd COURT, CALCUTTA
Present: Smt. Sneha Basu
JO Code: WB-01437

GR Case No. 133 of 2023
CNR No. WBCS03-000272-2023

Order dated 05.09.2024

Today is fixed for hearing of petition dated 06.06.2024.

Ld. APP is present on behalf of the state.

Accused person is present.

Accused person has filed some documents along with firisti. Let it be kept with there record.

Heard the submissions of both sides. Considered.

The record is taken up for passing order on the petition filed by accused person / petitioner praying for discharge.

Summary of contentions in the petition

Perused the petition and an abridgment of the contentions therein, is that the accused person has been falsely implicated and the accused person was carrying out work at his premises in a bonafide manner and as per sanction plan. It is further submitted that the investigating officer has filed charge sheet without taking into consideration judgment passed in CRR 3646 of 2019 by the Hon'ble Calcutta High Court.

The accused person has contended that all the vacuums and inconsistencies results to no disclosure that the accused person has committed any offence and as such there is no materials to substantiate framing of charge against the accused person. As such, it is prayed that the accused person be discharged as per the provisions of law under Section 239 of Code of Criminal Procedure.

Submission by the prosecution.

Ld. APP apprised this court about the ingredients of Section 401A of Kolkata Municipal Corporation Act and further submitted that at this stage the court can only assess the presence of a prima facie case to proceed to trial and not analyse and scrutinize the probative value of the probable evidence.

Findings and Decision

This court has perused the petition and all materials on record and in the opinion of this court, prior to arriving at a cohesive decision about the merits of the present petition, it is expedient to deliberate about the provision of law under Section 239 of Code of Criminal Procedure in a brief manner.

Section 239 of Code of Criminal Procedure lays down as follows.

“If, upon considering the police report and the documents sent with it under section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing.”

Therefore, if upon a perusal of the police report and documents, the court considers the charge to be groundless, then the court must discharge the accused.

While interpreting the provision of law under Section 239 of Code of Criminal Procedure, Hon'ble Apex Court had held the following, very poignantly held in the leading decision of **Sajjan Kumar vs. The CBI [2010 (10) SC 413]**

“ iii) The Court cannot act merely as a Post Office or a mouthpiece 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, any basic infirmities etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

iv) If on the basis of the material on record, the Court could form an opinion that the accused might have committed 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.

v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the Court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.”

As such, the essential consideration at the stage of deciding upon the point of discharge is the existence of a prima facie case to proceed to trial and not deciding about the pros and cons of the evidence. The court must refrain from entering into and deliberating upon the intricacies of the prosecution evidence and analyze the probative value of the same while considering a petition praying for discharge.

Now, with a brief understanding of the ambit, scope and key ingredients under Section 239 of CrPC, this court is proceeding with analyzing the merits of the present petition.

Ld. Counsel for the accused person has referred Office Circular No. 17 of 2021-22 dated 09.03.2022 and order dated 23.02.2022 of Hon'ble Calcutta High Court in CRR 3646 of 2019. In the said Circular it is highlighted that after receiving information from a private person the concerned O/C must write to executive engineer, KMC. Hon'ble Calcutta High Court has also highlighted the standard

operating procedure that must be followed when a complaint is received from a private person. Ld. Counsel for the accused person has also referred an order passed by Special Officer (Building) KMC u/s 400 of KMC Act. It had been highlighted that in the said order the name of the complainant is Tausif Ali Azar. **This court, upon perusal of the the charge sheet and the FIR can clearly observe that the complainant of the instant case is Rajat Majumder, Assistant Engineer. Therefore, prima facie it is evident that the instant case has been started on the basis of complaint lodged by the corporation which is proper as per provision of law u/s 620 of KMC Act and as per subsequent circulars. Corporation officials are the appropriate authorities to initiate complaint of the present nature.** A complaint being lodged by a private person in another case cannot bear relevants to this case. Prima facie this court observes that the complainant of the instant case is a corporation official and the disclosures made in the charge sheet is not groundless. Whether the prosecution is able to prove the allegation or not can only be decided on merit, after trial. Further, the petitioner had submitted that this is a matter of counter case. This is also a matter that can be adjudicated upon only after trial.

Accordingly, this court is not inclined to allow the prayer of the accused person in the instant petition.

Hence it is,

ORDERED

that, the prayer, of the accused person in the instant petition under Section 239 of Code of Criminal Procedure, is rejected in terms of the observations made above.

Fix 22.10.2024 for charge.

Municipal Magistrate
2nd Court, Calcutta