

IN THE MUNICIPAL MAGISTRATE, 2nd COURT, CALCUTTA

Present: Smt. Sneha Basu

JO Code: WB-01437

GR case no. 205 of 2023

CNR- WBCS-0300-0404-2023

Order dated 13.01.2025

Today is fixed for order

Ld. APP is present on behalf of the state.

The accused person namely Sankar Prasad is present today. The accused person namely Lalan Prasad is absent by filing petition.

Heard the submission of Ld. Counsel for both sides in connection with petition dated 07.10.2024 on a previous date. The record is being taken up for passing order.

Summary of contentions in the petition

Perused the petition and an abridgment of the contentions therein, is that accused petitioner as contended that the instant case is not maintainable even if the evidence collected is presumed to be true. He has stated that the instant case has been initiated by S I Ranjit Yadav, and the case was initiated without complying the guidelines laid down by the Hon'ble Calcutta High Court in CRR 3691 of 2019 (nilanjan Biswas v/s State of West Bengal). It is contended that the FIR was registered on the basis of an assumption.

The accused person has contended that all the vacuums and inconsistencies results to no disclosure that the accused persons have committed any offence and as such there is no materials to substantiate framing of charge against the accused persons. As such, it is prayed that the accused persons are 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.

The documents annexed with the charge-sheet indicates that S.I Ranjit Yadav had filed a complaint in connection with the case premises on 20.02.2022. In the letter of complaint he has mentioned that notice u/s 401 of KMC Act had already been served prior to filing of the complaint. It appears that in report dated 07.01.2023, the corporation has reported that there was no sanction plan for the

case construction. The corporation officials had also provided an infringement statement dated 15.03.2022.

The complaint of SI Ranjit Yadav indicates that the following is explicated:-

“On return to the P.S. records and it could be found that a notice u/s 401 of KMC Act has already been served to the above named P/R namely Lalan Prasad and Sankar Prasad over the said premises i.e. 13/H/12, Panditya Road on 28.01.2022.”

Therefore, prima facie, it appears that it is alleged that corporation officials had taken measures for the case premises prior to lodging of complaint by S.I Ranjit Yadav. Further details on the same be analysed only after trial.

Discharge under Section 239 of CrPC, as the provision lays down, requires the charge to be groundless and a perusal of the charge-sheet and annexed documents, does not reflect the charge to be entirely groundless. Whether such grounds have been established or not is a matter to be decided at the finality , after trial.

Upon a cumulative consideration of the above, this court concludes the charge-sheet and the annexed documents does not reflect the charge against the accused to be groundless and as such, this court is not inclined to allow the prayer of the accused person in the present petition.

Hence it is,

ORDERED

that, the prayer, of the accused person in the instant petition dated 07.10.2024, under Section 239 of Code of Criminal Procedure, is rejected in terms of the observations made above and the petition is disposed of, accordingly, in contested form.

Fix 04-03-2025 for appearance and framing of charge.

Municipal Magistrate
2nd Court, Calcutta