

IN THE MUNICIPAL MAGISTRATE, 2nd COURT, CALCUTTA

Present: Smt. Sneha Basu

JO Code: WB-01437

CrI. Misc. Case No. 1972 of 2017

Order dated 15.03.2023

Today is fixed for passing order.

Ld. APP is present on behalf of the state.

The accused persons are represented through their Ld. Counsel.

Heard the submissions made by Ld. APP and Ld. Counsel for the accused persons on the previous date.

The record is taken up for passing order on the petition dated 22-12-2022 filed by the accused persons, under Section 239 of CrPC, praying for discharge.

Summary of contentions in the petition

Perused the petition and an abridgment of the contentions therein, reflects that on 12.09.2017, Assistant Engineer, Borough VI had lodged a complaint before the Officer in Charge, Hare Street P.S., raising the allegation of an unauthorized construction at the case premises and thereafter, FIR being Hare Street P.S. Case no. 372 dated 18.09.2017 was formally drawn under Section 401A of the Kolkata Municipal Corporation Act. Thereafter, on 06.02.2019, Charge-sheet being no. 16 of 2019 dated 06.02.2019 was submitted before this court and subsequently supplementary charge-sheet being no. 83 of 2022 dated 30.05.2022 was also submitted before this court.

It is alleged by the accused persons that they received a copy of certain unsigned and unauthenticated documents and that the prosecution is relying their case on the said unauthenticated documents. Further, no report has been obtained after a due scientific or technical test. It is contended that the investigation of I.O is perfunctory and tainted. The accused persons have further contended that the requirements under Section 173(5) and 173(5a) of the criminal procedure code has not been followed by the investigating officer and as such there is no sufficient materials for framing charge against the accused persons.

As such, the accused persons have prayed for discharge 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 analyze 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.

A perusal of the charge-sheet shows that it states that sometime on or before 12.09.2017, the accused persons, being the persons responsible for the case constructions had continued the construction work in defiance of stop work notice issued by the Kolkata Municipal Corporation Authorities and that such

construction can consequent to hazardous situation. The contention raised by the accused person is that prosecution is relying on unauthenticated documents.

The admissibility of a documentary evidence in a case of present nature has been discussed in Section Section 591 of Kolkata Municipal Corporation Act which states the following about **Admissibility of document or entry as evidence:-** “A copy of any receipt, application, plan, notice, order or other document or any entry in a register in the possession of any municipal authority shall, if duly certified by the legal keeper thereof or other person authorised by the Municipal Commissioner in this behalf, be admissible in evidence of the existence of the document or entry, and shall be admitted as evidence of the matters and transactions therein recorded in every case where, and to the same extent to which, the original document or entry would, if produced, have been admissible to prove such matters and transactions.”

Further the admissibility of the documentary evidence can be scrutinized and analyzed during prosecution evidence and not at this stage. This court finds that it must re-iterate that, at this stage, this court must limit scrutiny only to assessing existence of a prima facie case fit to proceed to trial. There is no necessity to sift the documents with a fine tooth comb at this stage and deliberate upon the probative value of the same. The contentions raised by the accused persons in the present petition is a hyper-technical analysis, and bears nexus with the fine details and intricacies of the instant case.

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 persons in the present petition.

Hence it is,

ORDERED

that, the prayer, of the accused persons in the instant petition 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 13-04-2023 for framing of charge.

Municipal Magistrate
2nd Court, Calcutta