

ST No. 4 (11)/2023

Spl. Case 4 of 2022

(Reg. No. 4/22)

Order No.16

Dated: 03.11.2023.

The Ld. Spl. P.P is present.

The sole accused is present by hazira.

Perused the petition u/s 227 of Cr.P.C. dt. 06.08.22, the CD and the other materials on record.

The ld defence lawyer has contended with vehemence that the accused being a Chairman of a Municipality, is a public servant, and since she had been discharging the duty casted upon by Statue, she is protected u/s 197 of Cr.P.C. Since no sanction for initiating proceeding against the accused has been obtained in the case, charge could not be framed against her for want of sanction. He has relied upon the decision – **Shrilal vs. Manmath Kumar Mishra & Anr. -AIR 1960 Raj 173.**

He has thrust further upon the contention that the IO neither seized the relevant papers or documents showing the alleged misappropriation of property nor examine the relevant witnesses including the Councillors in investigation. There is, therefore, no prima facie materials to frame the charge against the accused for the alleged offence.

Per contra, the ld Special PP has submitted that no sanction is required u/s 197 of Cr.P.C. in the instant case as the accused was a Chairman of the Mirik Municipality and for her removal from the post of Chairman, no sanction from the Government is required. He has submitted further that there is sufficient materials showing the prima facie case against the accused.

The close perusal of the CD and other material on record indicates that the accused was the chairman of Mirik Municipality at the relevant period of time and she is alleged to have been misappropriated with the Government fund. In other words, the accused was the Chairman of Municipality at the relevant time.

In very recently it has been held by the Hon'ble Apex Court in **A. Sreenivasa Reddy vs. Rakesh Sharma & Anr. - (2023) 8 SCC 711**, Section 197 of Cr.P.C. protects only public servant who could only be removed from his office by or with the sanction of the Government.

Section 18(3) of the West Bengal Municipal Act, 1993 states that a Chairman may be removed from his office by a resolution carried by a majority of the total number of elected members of the Board of Councillors. Veiwed thus, a Chairman of the Municipality may therefore, be removed from his/her office by a resolution of Board of Councillors and in that event, no sanction from the Government is required. To put it otherwise, a Chairman of the Municipality may be removed from the office without sanction of the Government. Having said so, a Chairman of the Municipality cannot be said to have been enjoying the immunity as prescribed u/s 197 of Cr.P.C.

contd....Order No.16
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So far the decision – **Shrilal vs. Manmath Kumar Mishra & Anr.** (supra), is concerned, I find that the principal governing the application of Section 197 of Cr.P.C. as very recently observed by the Hon'ble Apex Court in **A. Sreenivasa Reddy vs. Rakesh Sharma & Anr.** (supra), has been observed and affirmed therein by the Hon'ble Court. Consequently, I find that this decision does not go in favour of the accused in the case. Resultantly, I am unable to accept the contention of the ld defence lawyer that this case is not survivable due to want of sanction u/s 197 of Cr.P.C.

The close perusal of the CD firmly indicates the existence the prima facie materials regards to the alleged offence by the accused. At this stage, the Court is required to see only upon the issue as to whether there exists prima facie case against the accused to go for trial. In my view, there is prima facie case showing the commission of the alleged offence by the accused. In all fairness, I thus, find no merit to the instant petition for discharged.

Hence, the instant petition for discharge u/s 227 of Cr.P.C. dt. 06.08.22 is rejected.

The charge u/s **406/409/420** of IPC is framed against the accused person in separate sheet, which is kept with the record. The contents of the charge are read over and explained to the accused person in her language, to which she pleaded not guilty by saying “kasur chaina” and claimed to be tried.

Issue summons upon the CSPW-1.

To **15.12.2023** for evidence of CSPW-1.

The prosecution to take step accordingly.

D/C by me,
Sd/-
Judge, Spl. Court,
Under SC & ST (POA) Act,Dlg

Sd/-
Judge, Special Court,
under SC & ST (POA) Act,
Darjeeling.