

Special Case no. 105 of 2021.
(Arising out of T.R. Case no.-01/2021)

Order no. 10 dated 24.08.2022.

The record is put up today for order.

The application U/s.239 of the Code of Criminal Procedure, 1973 (hereinafter, the Code) taken out praying for an order of discharge the accused/petitioner Amitava Roy from the instant case i.e. from Special Case no.-105 of 2021 corresponding to G.R. case no.-5823/2013 arising out of Golabari P.S. case no.634 of 2013 dated 22.08.2013 , is taken up for hearing.

In this application, it has been recited that the accused/petitioner has been arraigned as an accused person in the complaint filed by Sri Subrata Mitra, Chief Manager of State Bank of India, Salkia Branch, Howrah with Officer-in-Charge of Golabari P.S. alleging commission of offence by the petitioner punishable U/s. 409 of the IPC and the allegation brought against the accused person is that the accused person debited a sum of Rs.6,000/- and Rs.22,000/- from the account no.-10869753452 of one Mr. Shankar Kumar Palit on two occasions i.e. on 16.03.2013 and 19.03.2013.

Subsequently on the basis of such FIR, Golabari P.S. case no.634/2013 dated 22.08.2013 was started and on 19.12.2013 the petitioner was arrested.

After completion of investigation the concerned I.O. submitted charge sheet vide no.-722/2015 dated 28.07.2015 U/s.409 of the IPC.

In this application , it was alleged that to bring the offence home, the prosecution has placed its reliance upon two documents by the prosecution say , i) the bank pass book of Sri Shankar Kumar Palit and Jyotsna Palit and the statement of the aforesaid accounts from the date commencing from 11.02.2013 to 07.11.2013 and ii) Attendance Register of SBI, Salkia Branch in which the accused was shown present on both the two days i.e. on 16.03.2013 and 19.03.2013 and such documents cannot be relied upon and the witness has not stated the mode and manner in which the aforesaid amounts were allegedly debited from the account of Mr. and Mrs. Palit and such statement do not disclose any involvement of the petitioner in the alleged offence and the evidence on record does not justify conviction of the petitioner U/s.409 of the IPC.

Now while pressing his application, Ld. Advocate submitted that here, only two documents say, the bank pass book of Sri Shankar Kumar Palit and Jyotsna Palit and the statement of the aforesaid accounts from the date commencing from 11.02.2013 to 07.11.2013 and another document relied upon is Attendance Register of SBI, Salkia Branch. He asserted that such two documents are not sufficient to entail conviction and accused/petitioner has been falsely implicated in this case and here, holding trial basing upon such evidence would be miscarriage of justice and wastage of judicial hour and hence, accused person should be discharged and to buttress up his argument, he referred some authorities say, the judgements of S. S. Chheera reported in (2010) 12 SCC 190, State of Karnataka Vs L. Muniswami and others reported in (1988) 2 SCC 699 and one judgment of Soma Chakraborty reported in (2007) 5 SCC 403 and Niranjana Singh Karam Singh and others reported in (1990) 4 SCC 76.

Per Contra, Ld. P.P. i/c submitted that here, there are sufficient ground to presume that the accused person has committed the offence and here, prima facie has been made out against the accused person and he stated that here, court should not hold mini trial at this stage and placing reliance upon a judgment of Ashok Kr. Kashyap reported in 2021 SCC online 314, he prayed for dismissal of this application taken out by and/or on behalf of the accused person.

Now, before going to delve into the contour of the controversy, it would be wise to quote the provisions of S. 239 of the Code which is as follows :

S. 239 . When accused shall be discharged : - 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.

Now, admittedly, while taking dealing with application either U/s. 227 or U/s. 239 of the Code or while taking up the matter for consideration of framing charge, Judge cannot act merely as a post office

or mouthpiece of the prosecution and the court has to consider the broad probabilities of the case , total effects of the statements (recorded U/s. 161 of the Code) and documents produced placed before the Court and basic infirmities appearing in the case and so on but it does not mean that the Judge shall make roving enquiry into the pros and cons of the matter and he shall not hold mini trial .

Court has power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out , whether material placed before the court discloses grave suspicion against the accused person which has not been properly explained and in this regard , judgments of Profulla Sonal reported in AIR 1979 SC 366, Dilawar Babu reported in AIR 2002 SC 564 , SAjjan Kumar reported in (2010) 9 SCC 368 , Sonu Gupta reported in (2015) 3 SCC 424 , Arun Kumar reported in (2015) 2 SCC 417 and also the judgment of Ashok Kr. Kashyap (supra) may be referred to .

Here , in the given case , from the statement of account of the Mr. and Mrs. Palit , it transpires that Rs. 6000/- and Rs. 22,000/- had been debited from their account on two occasions and on two days , the accused person was present in the bank and Chief Manager of the bank concerned has made a complaint against the accused person alleging that it was the accused person who had debited those amounts from the aforesaid account and some of the employees have made statements that accused person had debited such amounts . Hence , on consideration of the facts and circumstances of the case and on studied scrutiny of the statements and documents placed by the prosecution before the court , this court has got no other alternative but to hold that prima facie case against the accused person has been made out and there is cogent reason before the court to hold that the charge against the accused is groundless and hence , it is held that this court does not find any merit in the application of the accused person taken out under section 239 of the Code.

The court has carefully gone through the judgments relied upon by and/or on behalf the accused person but this court has arrived at a conclusion that those judgments shall not come in aid of the accused person.

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Consequently , it is held that the application taken out by and/or one behalf of the accused person being devoid of merit cannot be entertained.

Hence , it is

Ordered

That the application taken out by and/or on behalf of the accused person U/s. 239 of the Code is dismissed .

To 07.09.2022 for consideration of the charge and further order.

Dictated & Corrected by me

Spl. J.

1st Special Judge, Howrah.