

S.C. No. 104 of 2022
New No. 6 of 2022
CNR No. WBHW060000902022

Present : Mr. Mintu Mallick, Additional Dist. & Sessions Judge, Amta, Howrah

Order No. 08 dated 13.07.2023

Sole accused person Debasish Banka on Court bail is present.

Accordingly, in view of earlier order the matter is taken up for consideration of charge.

Heard learned Advocate for the accused person as well the learned Public Prosecutor in- charge of this case.

It is a case U/S. 3/4 of E.S. Act in which the Investigating Officer namely PSI Ripon Saha submitted his report in Final Form, through the Officer-in-Charge U.N. Pur P.S. on 29.07.2021 implicating the one accused person as named therein the charge-sheet, responsible for committing the offences.

In course of hearing, it is detected that the Investigating Officer did not comply the provision of Section 173(5) of the Code of Criminal Procedure, 1973 in course of submitting the report in Final Form before the Learned Addl. Chief Judicial Magistrate at Uluberia.

Learned Public Prosecutor in-charge, tried to justify the action of the Investigating Officer by submitting that as a common practice the documents might be lying with the case diary, therefore, the case diary is necessary for hearing the bail application even after submitting the report in Final Form.

This court is unable to accept the proposition formulated by the learned Public Prosecutor inasmuch, the law on this point is absolutely clear more so, in view of observation made by the Hon'ble High Court on June 14, 1996 in the case of Pradip Kumar Patra Vs State of West Bengal (reported in [1996] 2 CHN 147) that, at the time of submitting the report in Final Form, the Investigating Officer is duty bound to forward all the documents, including the statements which were collected during investigation and relied upon by the prosecution.

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Similarly, the Learned Court while taking cognizance of offences, or considering the charges, will limit its attention, only upon the materials on record and not on the case diary. In other words, the learned Court has got nothing to do with those materials that could be in the case diary, and have not been relied upon by the prosecution.

It is well-known that a case diary may contain several other materials which may be extraneous to the consideration of the Court. Therefore, it is not safe for the Learned Court to confine himself on the case diary for the purpose of taking cognizance, or the consideration of charge nor it is permissible for the Court to allow the single paged charge-sheet not being accompanied by any documents as required under the provision of Section 173(5) of Code of Criminal Procedure.

This Court has reason to record that there is serious lapses on the part of the Investigating agency, in not bringing all the documents which could be accompanied with the report in Final Form, in terms of section 173(5) of Code of Criminal Procedure.

Having regard to the facts and circumstances, the Officer-in-charge, U.N. Pur P.S., is directed to remove the defects as pointed out before the matter is taken up for consideration of charge.

Let the copy of this order be also sent to the Superintendent of Police, Howrah (Rural) District, Paniara, Howrah, for wide circulation, so that such serious lapses be not repeated while submitting the report in Final Form and also with a request to remove all the defects appearing in the pending case records, within three months, henceforth.

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Let the matter be brought to the Notice of learned Addl. Chief Judicial Magistrate at Uluberia, with a request to issue necessary direction so that the record be transferred to this court after satisfying the requirement as pointed above.

Fixing 23.08.2023 for consideration of charge and compliance by the Officer-in-charge, Udaynarayanpur P.S.

Accused person as before.

Dictated & corrected by me

Additional Sessions Judge,
Amta, Howrah
(J.O. Code : WB00694)

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