

21.07.23

Today is fixed for production of the accused persons, submitting of specific order of The Hon'ble Supreme Court of India, hearing the petition u/s 188 of Cr.P.C r/w section 207 of Cr.P.C., hearing of the petition dated 10.07.23 submitted by the ld. Counsel for the accused person, namely, Sachin Toshniwal and Prasenjit Hari for providing clone copies of electronic device seized by the investigating agency. All accused persons are produced from J/C.

Today on behalf of accused person, namely, Prasenjit Hari, Sachin Toshniwal and Apu Kumar Show one application is filed by their Ld. Counsel informing this court that one SLP(Criminal) has been registered as SLP (Cri.) no.8696/2023 and which is likely to be listed on 28.07.23 before The Hon'ble Supreme Court of India as communicated from the Ld. Advocate – On- Record before The Hon'ble Supreme Court of India and one copy of said communication is enclosed herewith. But the Ld. Counsel failed to submit any specific order as directed by this court. So, in view of the fact as well as direction of the Hon'ble high Court, Calcutta passed in CRR No.944/2023, this court has to proceed.

It appears from the record that on 20.04.23 on behalf of accused person, namely, Raneet Acharya one petition has been filed u/s 188 Cr.P.C. r/w section 207 of Cr.P.C., where it has been contended that most of the offences actually has allegedly committed out side of India and the victims are also from out side of India and therefore sanction from Central Government is exclusively necessary to proceed the case further. But the prosecution failed to supply the copy of the sanction, if at all taken, to the petitioner. Hence, ld. Counsel has prayed for call for a report from the IO to intimate this court whether any sanction has been obtained from the Central Government and if obtained to serve a copy of the sanction to the petitioner.

On the other hand Ld. Spl. PP has raised strong objection by filing a

written objection against the application u/s 188 of Cr.P.C. r/w section 207 of Cr.P.C. where it has been contended that proceed of crime took place within the jurisdiction of this county and the end beneficiary also lies within the jurisdiction of this country and therefore no sanction of central government of India is required and hence this petition is not maintainable.

I have heard the Ld. Counsel for the accused person, namely, Raneet Acharya as well as ld. Spl. PP. I have also perused the petition and written objection as well as FIR and other materials available on record. I have also given rapt attention of the submission of the Ld. Counsel of the parties. Considered.

On perusal of the contention of the FIR as well as charge sheet and other materials on record it appears to me that the alleged foundation of the crime in relation to the deception from inception originated within the jurisdiction of this court. Hence, permission of the central government is not required. So the petition filed on behalf of accused person, namely, Raneet Acharya u/s 188 of Cr.P.C. r/w section 207 of Cr.P.C. has no merit. Hence, it is rejected. It also appears from the record that on 10.07.23 ld. Counsel for the accused persons, namely, Sachin Toshniwal, Prasenjit Hari filed one application, where it has been contended that the investigating agency as well as prosecution are required to be directed to provide the cloned copies of the electronic device seized by the investigating agency as well as other articles and documents as mentioned in the petition dated 13.01.23 and 17.04.23 to these accused persons until then evidence of CSW-1 may be adjourned.

On the other hand Ld. Spl PP raised strong objection since all the copies have been provided to the accused persons and this petition has been made to prolong the proceeding and accordingly it should be rejected and CSW-1 is present and his examination in chief is required to be recorded in view of direction of the Hon'ble High Court, Calcutta in CRR no.944/2023.

On the other hand Ld. Counsel for the accused person, namely,

Gourav Jain and Raneeet Acharya submitted before this court that copies have been served to their clients and taking evidence of the CSW-1 should be started as their clients have been in custody almost one year.

Heard the Id. Counsel for the parties. I have also perused the petition and the order of the Hon'ble High Court, Calcutta and other materials on record. Considered.

On careful scrutiny of the record I find that charge sheet filed on 31.08.22 and copies there of had been supplied to all accused persons u/s 207 of Cr.P.C. on 05.09.22. Thereafter, supplementary charge sheet submitted on 12.03.23 and copies thereof had been supplied to all the accused persons on 11.04.23. Moreover, on perusal of the order of Hon'ble High Court, Calcutta passed in CRR no.944/2023, I find that the Hon'ble Court has been pleased to direct that, '**Mr. Nandy submits that whatever documents have been relied upon by the prosecution, whole of the same has been handed over in the clone copies of the two hard discs. In case the accused persons are able to satisfy the court that there is deficiency in such submission it would be for the accused/petitioner to subjectively satisfy the trial court regarding the same after inspection of the hard discs**'

So, the matter in issue has already been decided by the Hon'ble High Court, Calcutta and accordingly at this stage I am not satisfied with the submission of the Ld. Counsel for the accused persons as well as averment as narrated in the petition. Moreover, these particular accused persons have already challenged the order of the Hon'ble High Court, Calcutta passed on 05.07.23 in CRR no.944/2023, before the Hon'ble Supreme Court of India. So, this court is functus officio in relation to this matter. Hence, his petition has no merit and accordingly it is rejected.

It also appears from the record that Hon'ble High Court has been

pleased to direct the prosecution or conducting examination in chief of CSW-1. CSW-1 is also present.

Ld. Spl. PP submits before this court that prior to starting the examination in chief of the CSW-1 there is one petition for alteration of charge for the prosecution which is needed to be allowed other wise prosecution would be prejudiced.

Ld. Spl. PP also submits that charges have already been framed against the accused persons, namely, 1.Gourav Jain, 2.Sachin Toshniwal, 3.Raneet Acharya, 4.Prosenjit Hari and 5.Apu Kumar Show on 13.01.23 and thereafter investigating officer has submitted supplementary charge sheet on the basis of the new evidence. So, in order to incorporate such findings alteration of charge is required for the interest of this case.

I have heard the Ld. Spl. PP. I also perused the charge sheet and supplementary charge sheet and other materials on record. Considered.

Having regard to the submission of Ld. Spl. PP and considering the supplementary charge sheet as well as contention of the petition of alteration of charge I am of opinion that this petition has merit. Hence, prayer for alteration of charge on behalf of prosecution is considered and allowed.

The record is taken up for additional framing of charge in view of alteration of charge.

All the five accused persons are produced before this court from J/C.

Ld. Counsel for the accused persons are also present.

Ld Spl. PP is also present.

Heard. Perused the materials on record. Considered.

The contents of additional charge u/s. 66D of Information and Technology Act, 2000 is read over and explained to the all accused persons to which the accused persons pleaded, 'not guilty' and claimed to be tried. Accordingly, additional charge is framed u/s. 66D

of of Information and Technology Act, 2000 against all the accused persons in view of alteration of charge.

The contents of additional charge u/s 201 of Indian Penal Code is read over and explained to only accused person, namely, Apu Shaw separately to which he pleaded, 'not guilty' and claimed to be tried. Accordingly, additional charge is framed u/s. 201 of Indian Penal Code against the only accused person, namely, Apu Shaw in view of alteration of charge.

Now the record is taken up for examination of the CSW-1, namely, Gurjot Singh. He is examined in part as PW1 at the stage of examination in chief. During course of examination in chief of PW-1 the written complaint along with the signature of PW1 is marked as exhibit-1 (as a whole) (with objection). The examination in chief is deferred as per prayer of prosecution.

To 02.08.23 for further examination in chief of PW-1, namely, Gurjot Singh.

PW-1 is hereby directed to remain present on 02.08.23 for his further examination in chief.

Dictated and corrected by me.

ACJM, Bidhannagar

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