

Order No. 11, dated: 28-09-2023.

The case record has been put up today as stipulated day i.e. 28.09.2023 was declared holiday by the Hon'ble High Court vide notification no. dated .

A petition has been filed by the de facto complainant praying supply of copies relied upon by the investigating officer while submitting the charge-sheet i.e. report as per section 173 of the Code of Criminal Procedure, 1973.

On call, Ld. Lawyer for the defacto complainant is found to be present. Ld. PP-in-charge is also present.

Castigating the role of the investigating officer, the learned advocate for the de facto complainant submitted that the investigation has never been done properly and for that reason, a narazi petition has already been filed by the defacto complainant and in order to properly ventilate his grievance, the de facto complainant needs the documents relying on which the police has submitted the report. The Ld. PP--in-charge raised cavil to such prayer.

I have bestowed my thoughtful consideration to the entire gamut of this case. This case was started under section 3(1)(r)(s) of the SC & ST (Prevention of Atrocities) Act, 1989 and charge-sheet i.e. report as per section 173 of the Code of Criminal Procedure, 1973 has been filed for commission of offence under section 3(1)(r)(s) of the SC & ST (Prevention of Atrocities) Act, 1989. Considering this fact notice was issued upon the de facto complainant and the de facto complainant has appeared in this case and has submitted that he wants to ventilate his grievance against the charge-sheet i.e. report as per section 173 of the Code of Criminal Procedure, 1973. It is of normal prudence that in order to ventilate any grievance properly and specifically the de facto complainant needs to know what exactly prevailed with the investigating officer while filing the charge-sheet i.e. report as per section 173 of the Code of Criminal Procedure, 1973.

From the frame work of Criminal Procedure Code 1973 it can be safely delineated that the de facto complainant cannot claim that he has a right to get the copies of statements recorded under section 161 of the Criminal Procedure Code 1973, and other materials collected during investigation. It is one of the sanctified statutory rules that a court cannot legislate and it has to stay within the limits of the statute itself. But law has to be interpreted in a purposive manner and such interpretation should also be in resonance with the pristine proposition of jurisprudence. Every adjudication process is rested on the bed rock of the canons of natural justice and affording a fair opportunity of being heard is one of the very basic of the rule and has also been accentuated on human rights principals.

It is worthwhile to add that as per section 173 sub-section (2) of the Criminal Procedure Code 1973 on culmination of the investigation the police report is filed and it forms part of the record. As per section 173 sub-section (5) of the Criminal Procedure Code 1973 the Investigating Officer is duty bound to forward to this court, along with the report, all documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation and the statements recorded under

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section 161 of all the persons whom the prosecution proposes to examine as its witness. When once forwarded those are part of the charge-sheet and the charge-sheet i.e. report as per section 173 of the Code of Criminal Procedure, 1973 forms the part of the record.

Based on the above delineations, especially in absence of any clear prohibition and being pioneered by the observation of the Hon'ble High Court in Indranil Mukherjee vs. State of Bengal, (Calcutta) C.R.R. No. 3862 of 2016. D/d. 31.1.2017 reported in 2017 (2) Cal. Cri.LR 420, I find no predicament in hoisting the prayer of the de facto complainant.

Hence the prayer of the de facto complainant is allowed. The copy of charge-sheet i.e. report as per section 173 of the Code of Criminal Procedure, 1973, statements recorded under section 161 of the Code of Criminal Procedure, 1973, and seizure be supplied to the de facto complainant to afford him a fair opportunity of being heard.

The IO shall arrange for furnishing to the de facto complainant the aforementioned copies at the cost to be born by the de facto complainant.

Fix 19.12.2023 for hearing of the narazi petition filed by the defacto complainant.

CD be produced on the date fixed.

Typed to the dictation directly;

corrected on the system.

Additional District and Sessions Judge,
01st Court, Alipore, South 24 parganas.

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