

C.R.R. 3686 of 2010
in
IA.No. CRAN 1 of 2011 (Old No. CRAN 1343 of 2011)

In the matter of : **Joydeb Mondal**
....petitioner

Mr. Rajdeep Mazumder,
Ms. Sayanti Poddar,
Mr. Sarthak Mondal,
....for the petitioner.

Mr. Avishek Sinha,
....for the State.

1. In this application as filed under Section 482 Cr.P.C, the petitioner has prayed for quashing of all further proceedings arising out of Kulti P.S Case no.19 of 2002 dated 26.01.2002.

2. Mr. Mazumder, learned Counsel for the petitioner submits before this Court that since the basis of the implication of the present accused/petitioner in the said P.S case is the statement of a co-accused which has got no evidentiary value in the eye of law, the proceeding before the learned Trial Court may be quashed. It is further submitted by Mr. Mazumder that on comparative study of the written complaint and the statements of the witnesses as recorded under Section 161 Cr.P.C in course of investigation, it would reveal that in the event the trial before the Trial Court is allowed to be proceeded the same would cause serious mis-carriage of justice.

3. Such prayer has been opposed on behalf of the State. Mr. Sinha, learned advocate for the State submits before this Court that in exercise of power under Section 482 Cr.P.C. this Court should not quash the proceeding against the accused who has been charge-sheeted on the basis of the materials collected in course of investigation.

4. In course of hearing, Mr. Sinha has handed over a copy of the relevant case diary.

5. It transpires from the written complaint that the present accused petitioner is FIR named and his name further transpires from the statements of the witnesses who are all police personnel and the members of the raiding team.

6. At this stage this Court cannot disbelieve such statements since it is found that while submitting Final Report, the Investigating Officer has placed his reliance upon the statements of those witnesses as discussed(supra).

7. Considering the fact that sufficient incriminating materials are available in the CD as has been collected by the I.O in course of investigation, this Court considers that a serious mis-carriage of justice would be caused if the instant application under Section 482 Cr.P.C. is allowed ignoring such statements of the witnesses.

8. In further considered view of this Court, the veracity of the statements of the witnesses as recorded under Section 161 Cr.P.C are to be assessed after recording of evidence of prosecution witnesses in course of trial.

9. In view of the discussion made herein as above this Court thus finds no merit in the instant application as filed under Section 482 Cr.P.C. and accordingly the same is dismissed with all connected pending applications.

10. Consequently the interim order of stay, if any stands hereby vacated.

11. Learned Trial Court is hereby directed to fix a shortest possible date for consideration of charge against the accused persons and thereafter to proceed with the said case in accordance with law.

12. Department is directed to communicate this order to the learned Trial Court forthwith.

13. Liberty is given to the learned Counsel for the State to communicate the order to the learned Trial Court.

10. Learned Trial Court is directed to act on the server copy of this order.

11. Case Diary be returned.

(Partha Sarathi Sen, J.)