

Criminal Revision

Present:

The Hon'ble Justice Ashim Kumar Roy

Date of judgment: 06.01.2010

C.R.R. No. 2549 of 2009**Sri Bidyut Kumar Chatterjee
versus
State of West Bengal & Ors.****Point:**

DISCHARGE: Accused filed application for discharge- Charge-sheet submitted after the statutory period disclosed prima facie case-Whether application can be allowed- The Code of Criminal Procedure, 1973-S. 167(5).

Fact: The petitioner/accused moved an application under Section 167 (5) of the Code of Criminal Procedure praying for his discharge from the case initiated against him on the ground that no charge-sheet was submitted within the statutory period however, subsequently, the police submitted charge-sheet against him for the self-same offence. The Learned Chief Judicial Magistrate, Alipore rejected the petitioner's prayer for discharge under Section 167 (5) of the Code of Criminal Procedure on a finding that sufficient materials have been collected by the police as against him. Challenging such dismissal, the petitioner/accused moved the instant Revisional application.

Held: In view of the ample materials showing complicity of the petitioner in the commission of the alleged offence, the High Court does not find any illegality in the order impugned since the charge-sheeted materials have clearly disclosed prima facie case against the petitioner.

Paragraph – 4

For Petitioner : Mr. Chandra Shekhar Kabiraj

For State : Mr. Swapan Kumar Mullick

The Court:

The subject matter of challenge in the instant criminal revision is a charge-sheet relating to the offences punishable under Sections 224/120B of the Indian Penal Code.

2. The background facts of the case are as follows;

“On 1.10.08 the accused Dolly Howlader was brought at Alipore Sadar Court, Bengal Lock Up, from custody for her production before the Learned Judicial Magistrate, 9th Court, Alipore in connection with Jadavpur Police Station Case No. 355 (6) 08, under Section 224 of the Indian Penal Code. When the accused Bidyut Chatterjee, Bench Clerk – 1, attached to the Learned Judicial Magistrate, 9th Court, Alipore along with one Law Clerk, Moley Chatterjee produced the custody warrant before the Lock Up In-charge and got her released on the strength thereof. The said Dolly Howlader was handed over to the accused Bidyut Chatterjee. Subsequently, it was discovered that there was a note endorsed on the custody warrant for not releasing her from custody as she was a Bangladeshi National.

Following the aforesaid incident Alipore Police Station Case No. 241, dated 30.10.08, under Sections 120B/224 of the Indian Penal Code was registered against the petitioner.

3. In the meantime, in connection with the aforesaid case on April 18, 2009 the petitioner moved an application under Section 167 (5) of the Code of Criminal Procedure praying for his discharge from the case on the ground no charge-sheet was submitted within the statutory period, but on April 21, 2009 police submitted charge-sheet against him and another for the self-same offence.

However, the Learned Chief Judicial Magistrate, Alipore, 24-Parganas (South) rejected the petitioner's prayer for discharge under Section 167 (5) of the Code of Criminal Procedure on a finding that sufficient materials have been collected by the police as against the accused/petitioner showing his complicity in releasing one Bangladeshi National from custody by illegal means.

In this criminal revision the petitioner challenged the said order, whereby the Learned Court below rejected his aforesaid application.

4. Now having gone through the evidentiary materials collected during the investigation I find that on October 1, 2008 the present petitioner a Bench Clerk attached to the Court of the Learned Judicial Magistrate, 9th Court, Alipore managed to release one Dolly Howlader, an accused of Jadavpur Police Station Case No. 355 (6) 08, a Bangladeshi National on the basis of an order of bail passed on June 30, 2008, although in the custody warrant there was a specific note of the Superintendent, Presidency Correctional Home, Kolkata that she being a Bangladeshi National should not be released from the custody. I further found from the order sheets relating to the aforesaid case that on July 2, 2008, the Learned Court below made a record of receipt of a report from the Superintendent, Presidency Correctional Home, Kolkata to the effect that Dolly Howlader was a Bangladeshi National and all papers regarding her repatriation has been completed and she was awaiting for deportation and as such should not be released. It further appears from the evidentiary materials collected by the police during investigation that the present petitioner managed to release her from custody and also took her away in a hired taxi and since then the accused

Dolly Howlader is not traceable. In view of the aforesaid ample materials showing complicity of the petitioner in the commission of the alleged offence, I do not find any illegality in the order impugned. The charge-sheeted materials have clearly disclosed prima facie case against the petitioner.

This criminal revision has no merit and accordingly stands dismissed.

Criminal Section is directed to deliver urgent Photostat certified copy of this Judgement to the parties, if applied for, as early as possible.

(Ashim Kumar Roy, J.)