

Criminal Revision

Present: The Hon'ble Justice Ashim Kumar Roy

Judgment On : 23-03-2010.

C.R.R. No. 321 of 2010

Mrityunjoy Dolui
versus
The State Of West Bengal & Anr.

POINTS:

Investigation-----Whether the Magistrate can monitor an investigation -----Code of Criminal Procedure, 1973, Section 100, Indian Penal Code, S.34,406 & 498A.

FACTS:

In a charge under section 498A, 406 and 34 of The Indian Penal Code investigating officer prayed to the Court for presence of accused for the purpose of recovery of "Streedhan" articles vide two letters dated November 15th 2009 and December 18th 2009. This was allowed by the Learned Magistrate under Section 100 of The Criminal Procedure Code.

HELD:

The direction passed by the Learned Magistrate calling upon the accused/petitioner to be present at the time of search and seizure under Section 100 of the Code of Criminal Procedure is absolutely uncalled for. Indisputably, the Court has no authority to monitor an investigation. Search and seizure is the part of the investigation and it is exclusively for the Investigating Agency to take steps in that regard and the Learned Court has no occasion to interfere with the same.

PARA---3

For Petitioner : Mr. Ayan Bhattacharjee

For State : Mr. Kallol Mondal

THE COURT:

1. The present petitioner has been arraigned in connection with a case relating to the offences punishable under Sections 498A/406/34 of the Indian Penal Code. During investigation, the Investigating Officer of the case moved two applications, one on November 15, 2009 and another on December 18, 2009. In the application moved on November 15, 2009, the Investigating Officer prayed for Court's permission to break open the door of the house of the accused Mrityunjoy Dolui and to recover the stridhan articles as per the list submitted by the

defacto-complainant and in the application moved on December 18, 2009, the Investigating Officer prayed that the accused Mrityunjoy Dolui and the others be directed to hand over the stridhan articles to the defacto-complainant. Both the matters were taken up for hearing on 1st February, 2010 when the Learned Magistrate, amongst others, made the following orders; *“The accused Monoranjan Dolui is hereby directed to be present under the provisions of Section 100 Cr.P.C. at the time of such preparation of the list in order to proceed with the smooth investigation of this case and he is further directed to open the door himself otherwise the I.O. will be at liberty to take all necessary steps to open the same.”*

2. It is submitted by the Learned Counsel of the petitioner that during the pendency of this criminal revisional application, the aforesaid order has been given effect and the police made the search and seized the alleged stridhan articles. He further submitted, however, at the time of search and seizure, the present petitioner, accused Monoranjan Dolui, was not present as directed by the Learned Court below. According to the learned advocate of the petitioner the direction upon the accused/petitioner to be present at the time of the search and seizure is wholly uncalled-for and that part of the order is liable to be set aside. On the other hand, Mr. Kallol Mondal, the Learned Counsel appearing for the State, in his usual fairness submitted that there was no justification in passing such direction against an accused person.

3. I have given my anxious and thoughtful consideration to the submissions made on behalf of the parties, in my opinion, that Mr. Bhattacharjee is absolutely correct in saying that the direction passed by the Learned Magistrate calling upon the accused/petitioner to be present at the time of search and seizure under Section 100 of the Code of Criminal Procedure is absolutely uncalled-for. Indisputably, the Court has no authority to monitor an investigation. Search and seizure is the part of the investigation and it is exclusively for the Investigating Agency to take steps in that regard and the Learned Court has no occasion to interfere with the same.

4. In such view of the matter, the aforesaid direction whereby the present petitioner was directed to be present at the time of search and seizure is hereby quashed.

5. This application, thus, stands disposed of.

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

(Ashim Kumar Roy, J