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**(2001) 10 CAL CK 0002**

**Calcutta High Court**

**Case No:** Criminal Revisional Jurisdiction C.R.R. No. 274 of 1998

Sunil Kumar Dubey

APPELLANT

Vs

The State of West Bengal

RESPONDENT

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**Date of Decision:** Oct. 12, 2001

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 167(5), 393, 401

**Citation:** (2002) 3 CALLT 399

**Hon'ble Judges:** Pradip Kumar Biswas, J

**Bench:** Single Bench

**Advocate:** N.C. Das and Debasis Sutradhar, for the Appellant; S.N. Aliquadri and R.K. Ghosal, for the Respondent

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### **Judgement**

P.K. Biswas, J.

This revisional application under Sections 399, 401 of the Code of Criminal Procedure has been directed against the impugned order dated 22.12.97 passed by Sri A. Anand, learned Metropolitan Magistrate, 8th Court, Calcutta in connection with G.R. case No. 1423 of 1990.

2. The facts leading to the present revisional application may be summarized as follows.

3. One Gouri Shankar Sharma lodged one letter of complaint on 5.7.1990 before the Officer-in-charge, Anti Cheating Squad, Detective Department, Calcutta-1 against Sunil Kumar Dubey, the present petitioner and one Basant Kumar Daga and on receipt of the same, a police case being P.S. Case No. section "D" case No. 269 dated 7.7.1990 u/s 120B and 420 of the Indian Penal Code was started treating the aforesaid letter of complaint as FIR, against Sunil Kumar Dubey and Basant Kumar Daga.

4. Sunil Kr. Dubey, the petitioner herein, was arrested in connection with the above case on 18.11.1990 as was produced on 19.11.1990 before the learned Additional Chief Metropolitan Magistrate, Calcutta.
5. The investigation was taken up by the IO, and it has been completed on 17.3.1993 and consequent upon that charge-sheet was submitted on 20.3.1993. Upon receipt of the aforesaid charge-sheet with allied papers, cognizance was taken by the learned Court below for the offences u/s 120B, Section 420 of the Indian Penal Code. The present petitioner filed an application u/s 167(5) of the Code of Criminal Procedure on 19.8.1997 praying therein for his discharge alleging mainly that as the instant case comes within the purview of the category of Clause III of Section 167(5) of the Code of Criminal Procedure as envisaged in the West Bengal Amendment Act 24 of 1988, the investigation of the aforesaid case has not been completed within the statutory period and the charge-sheet was submitted after expiry of the statutory period prescribed u/s 167(5) of the Code of Criminal Procedure.
6. The learned Court below upon hearing the parties rejected the aforesaid application on December 22, 1997.
7. Being aggrieved by and dissatisfied with the aforesaid order, the petitioner has come up with the revisional application with the prayer for his discharge alleging therein that since the case in hand clearly comes within the ambit of Clause III of Section 167(5) of the Code of Criminal Procedure as envisaged in the West Bengal Amendment Act 24 of 1988, the investigation of the concerned case must have been completed within two years from the date of arrest unless the prosecution, before the expiry of that period, files appropriate application praying for extension of time for continuation of investigation and obtains appropriate order for continuation of the investigation even beyond the statutory period. The petitioner in this case was arrested on 18th November, 1990 and the investigation was completed on 17th March, 1993 and the charge-sheet was submitted on 20th March, 1993 i.e., after the expiry of statutory period. So, in the instant case, the statutory period has expired on 18.11.92 and the Investigating Authorities did not pray for extending the period of investigation and in such a situation, the learned Court below was not authorized to take cognizance on the charge-sheet pursuant to the investigation carried out beyond the statutory period of two years, from the date of arrest of the present petitioner as such cognizance taken by the Court on the basis of such charge-sheet was bad in law and utterly in violation of the settled position of law and as such cognizance taken by the Court being nullity, should, therefore, be quashed and the accused persons should be discharged inasmuch as further proceeding of this case upon such illegal cognizance taken by the concerned Court will be surely a gross abuse of the process of law. Hence, this prayer.
8. Both the learned counsels, appearing for the parties, were heard at length.

9. The learned counsel for the accused petitioner has submitted before me that Section 167 of the Code of Criminal Procedure has fixed certain time schedule for production of the arrested accused before the Magistrate for detention of the accused in custody after remand, for completion of investigation into different offences and the consequential orders to be passed in a case where such time schedule is not adhered to etc. By virtue of West Bengal Amendment Act 24 of 1988, certain amendments in respect of Sub-section 5 and Sub-section 6 of Section 167 of the Code of Criminal Procedure have been introduced and the present case in hand being clearly covered under Clause III of Sub-section 5 of the West Bengal Amendment Act 24 of 1988, the investigation of the case should have been concluded within a period of two years from the date on which the accused was arrested or made his appearance and that not being complied with in the present case, the learned Magistrate should have passed an order stopping further investigation into the offence, and to discharge the accused unless the Officer making the investigation satisfies the Magistrate that for special reasons and in the interest of Justice, the continuation of investigation beyond the period mentioned in this sub-section is necessary.

10. Here, in this case, the present petitioner was arrested admittedly on 18.11.1990 and the investigation in connection with this case has only been completed on 17.3.1993 and the charge-sheet was placed before the concerned Court on 20.3.1993 when cognizance was taken by the learned Magistrate for proceeding with this case but for continuance of the investigation, beyond the period of two years, no prayer was made by the IO, praying for extending the time.

11. The petitioner before us has joined the issue from this point alleging that on the basis of charge-sheet submitted by the IO, beyond the statutory period, as aforesaid, the concerned Court was not at all authorized to take cognizance and the accused persons should have been discharged from this case.

12. The learned counsel appearing for the opposite party/State in opposing the aforesaid claim of the petitioner has submitted before me that earlier, in large number of decisions of the single Bench, Division Bench and Special Bench of this High Court, views were taken that cognizance of the offence and trial of an accused on the basis of the investigation carried on and the charge-sheet submitted beyond the statutory period without any specific order from the Magistrate was bad and void and in such decisions it was further held that without a specific order from the Magistrate for continuation of investigation beyond the statutory period, the accused, immediately on the expiry of the statutory period, acquired a right to be discharged from the case if the investigation was not completed and concluded within the said statutory period. In those decisions, it was also held that any cognizance or trial for an offence, on the basis of investigation continued, a charge-sheet filed beyond the statutory period, without an appropriate order from the Magistrate u/s 167(5) of the Code, must be held as illegal and void on the

ground of miscarriage of justice.

13. He has further submitted that in view of the Full Bench decision of this Court in Kalyan Kumar Das v. State of West Bengal and Textile Commissioner v. India Jute Industries Ltd., reported in 1998 C Cri LR (Cal) 292 and the decision of the Apex Court in Nirmal Kanti Roy v. State of West Bengal and Ganesh Lal Mundra v. S. Dasgupta and Ors., reported in 1998 C Cr Lr (SC) 216 it has been established and the consequential order of discharge are not intended to be the automatic sequel to the failure to complete investigation within the period fixed in Sub-section 5 of the Code and it was further held that the time scheduled shown in Section 167(5) of the Code is not to be treated with rigidity and it is not that mandatory that on the expiry of the period indicated therein, the Magistrate should necessarily passed the order of discharge of the accused.

14. It was further held that before ordering the stoppage of investigation, the Magistrate shall consider whether on the facts of that case, further investigation would be necessary to foster interest of criminal justice. The Magistrate at that stage must look into the record of the investigation to ascertain the progress of the investigation, thus, far registered.

15. If substantial part of the investigation was by then over, the Magistrate should seriously ponder over the question whether it would be conducive to the interest of justice to stop further investigation and discharge the accused.

16. He has further submitted that simply for the reasons that the charge-sheet was submitted beyond the statutory period mentioned in Section 167(5) of the Code as per West Bengal Amendment, it was not an automatic sequel to pass the order of discharge of the accused and the learned Magistrate at that stage must have to look into the record of the investigation to ascertain the progress of the investigation registered in this within the statutory period as envisaged u/s 167(5) of the Code as per West Bengal Amendment.

17. It has further been submitted by him that it has now become almost settled position of law from the above decisions of the Full Bench of this Court as also by the decision of the Apex Court, wherein it has been clearly laid down that since there was an order for stoppage of investigation, the learned Magistrate was entitled to see police papers upto that date and not to any other date after such stoppage was made. And even in such eventuality, the discharge was not an automatic act, nor an inevitable sequence and the learned Magistrate was required to make a positive order upon due application of mind and consideration of all relevant facts and circumstances.

18. It has further been contended by him that in the instant case, no such prayer for stoppage of investigation has been made, but the petitioner made an application before the learned Magistrate challenging the charge-sheet filed by the IO, beyond the statutory period of two years and while disposing of such application alongwith

application of another accused persons, wherein taking of cognizance of the offence by the learned CMM, has been challenged by another accused persons namely, Basant Kumar Daga, the learned Magistrate had occasion to ascertain the progress of the investigation registered during the period of two years and in fact, the learned Magistrate has made certain observation that the entire investigation was done by the erstwhile IO, within the prescribed period and the subsequent IO, on the retirement of the erstwhile IO, only gathered material and submitted the charge-sheet beyond the stipulated two years" period. And upon such consideration, the learned Magistrate has rejected the prayer of the present petitioner which is quite in conformity with the settled position of law as enunciated by the Apex Court as also by the Full Bench decision of this Court in the above cited decisions.

19. He has, therefore,, submitted that there is no merit in this revisional application and it should be rejected therefor.

20. I have given my anxious consideration over these submissions made by the rival parties. Now, the question which comes up for my consideration is whether in the given situation, prayer for discharge of the present petitioner can be made or not.

21. True it is, that earlier in a situation like this, where the investigation was required to be completed within the stipulated period from the date of arrest or from the date of surrender of such accused persons and when such investigation, as aforesaid, was not completed within the statutory period from the date of arrest or surrender of the accused persons, as the case may be, and where cognizance was taken on the basis of the charge-sheet submitted after expiry of the statutory period without obtaining permission of the Court, the cognizance taken by the Court was treated to be invalid and the proceeding was also quashed by the different Courts taking similar views.

22. But, after the Full Bench decision of this Court in Kalyan Kumar Das v. State of West Bengal and Textile Commissioner v. Indian Jute Industries Ltd., reported in 1998 C Cri. Lr. (Cal) 292 and also by the judgment of the Apex Court in Nirmal Kanti Roy v. State of West Bengal and Ganesh Lal Mundra v. S. Dasgupta and Ors., reported in 1998 C Cri Lr (SC) 216 it has become well settled position of law that the order stopping further investigation into the offence and the consequential order of discharge are not intended to be the automatic sequel to the failure to complete investigation within the period fixed in Section 167(5) of the Code of Criminal Procedure and the learned Magistrate had to pass judicial order upon due application of mind and consideration of all relevant facts. It has also emerged from the aforesaid decision reported in 1998 C Cri Lr 292 (supra) that there is nothing to indicate in Section 167(5) of the Code that if the investigation has not been completed within the statutory period allowed in Section 167(5) of the Criminal Procedure Code, the Officer-in-charge of the Police Station can be considered to be absolved of his responsibility and liability in filing the police report u/s 173(2) of the

Code, even on the stoppage of such investigation and in a situation like that, it follows as a consequence that the cognizance has to be taken of such a report by the Magistrate, irrespective of the fact whether the investigation was stopped at the end of the statutory period of two years.

23. In the instant case, the offence complained of clearly comes within the purview of Section 167(5) of the Code as per the West Bengal Amendment and in this case, the investigation was required to be completed within two years from the date of arrest or surrender of the accused. In this particular case, the accused Sunil Kumar Dubey was arrested on 18.11.90 and was produced before the Court on 19.11.90 and the investigation was completed on 17.11.93. Obviously, therefore, the investigation of this case could not be completed within two years period from the date of the arrest of the accused Sunil Kumar Dubey.

24. It could not be shown by the prosecution in this case that IO, prayed for extension of time for continuation of the investigation beyond the period of two years and there was no formal order passed by the concerned Magistrate stopping further investigation of this case after the expiry of two years" period on and from 19.11.1990. The learned Magistrate has taken cognizance in this case on 20.3.93 on the materials available before him in the charge-sheet.

25. Now, as per the establishment position of law, the learned Magistrate was not authorized to peruse the documents and materials with regard to securing of evidence after the expiry of the statutory" period and the learned Magistrate was not also entitled or authorized to take cognizance after perusing such materials and papers in the case diary beyond the statutory period. Of course, in the impugned order, it has been clearly stated by the learned Magistrate that the entire investigation was done by the previous IO, within the prescribed period and thereafter, he retired and the subsequent IO to whom the further investigation was entrusted merely gathered the materials and submitted the charge-sheet beyond the stipulated period of time and such delay was only due to non-receipt of the hand-writing expert's report and ultimately the charge-sheet was submitted without the report. The learned Magistrate was of the further opinion that since no separate materials were collected by the IO, beyond the statutory period, no prejudice has been caused to the accused as the charge-sheet was submitted with the materials, collected prior to the expiry of the statutory period.

26. Nothing contrary, however, could be shown from the side of the petitioner to show that for the purpose of taking cognizance, in the instant, the learned Magistrate has placed his reliance on the materials collected, after the expiry of such statutory period.

27. In such a situation, the petitioner is not entitled to have his order of discharge from this case as the learned Magistrate, as per the settled position of law had absolute right to proceed with this case in accordance with law upon perusal of the

materials in the police report collected in connection with this case restricted to two years investigation and take cognizance on the basis thereof.

28. In view of the above position, the petitioner's prayer for discharge could not have been allowed and rightly, the learned Magistrate has rejected the aforesaid prayer of the petitioner on the existing materials before him and I find that no illegality or impropriety has been committed by the learned Magistrate in passing the impugned order.

29. In view of the foregoing, I find that the instant revisional application is devoid of any merit whatsoever and the same is, therefore, liable to be rejected.

Consequently, the revisional application is dismissed.

With the above observation, the present matter, is thus, disposed of accordingly.

Let a plain copy of this order be sent down to the learned Court below for necessary information and compliance with a direction as aforesaid to proceed in this case as expeditiously as possible.