

(1997) 08 CAL CK 0019**Calcutta High Court****Case No:** C.R.M. No. 2897 of 1997

Ansar Rahaman

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision: Aug. 6, 1997**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 161, 173(5)

Citation: (1997) 2 ILR (Cal) 345**Hon'ble Judges:** R. Bhattacharyya, J; A.B. Mukherjee, J**Bench:** Division Bench**Advocate:** D. Banerjee and S.B. Chakraborty, for the Appellant; S. Maitra and J. Ram and K. Ghosh, for the Respondent**Judgement**

R. Bhattacharyya, J.

We asked for the records of the learned Court below in connection with this case which is sent in a sealed cover. The same is opened in Court today.

2. Mr. Banerjee has already canvassed in his prayer for bail when we were constrained to bring the L.C.R. from the learned Court below. It has been urged by Mr. Banerjee while urging the prayer for bail that the charge-sheet was not submitted in accordance with the provisions of law. According to him, Section 173(5) demands that a charge-sheet when submitted, must bear all the documents, namely, all documents or relative extracts on which the prosecution proposed to rely other than those already sent to the Magistrate during investigation and the statements recorded u/s 161, of all the persons whom the prosecution proposes to examine as witnesses. This is curious to find from the perusal of the charge-sheet filed in the learned Court below that not a single statement of witness has been appended to the charge-sheet nor the same was filed along with the charge-sheet in the learned Court below suggesting thereby that there is no submission of charge-sheet in the eye of law. It is a lame charge-sheet and the time stipulated for

filings the same is incurable.

3. Mr. Maitra has urged another point that the investigating agency is within its power and reach to file a supplementary charge-sheet, but we are unable to persuade ourselves to agree to such submission as prayer has to be made before the learned Magistrate or the Court in sensing thereof to file the supplementary charge-sheet. The submission of Mr. Maitra, in the context, becomes casual which has no legal foundation. It is admitted on all hands that the accused person is in custody for more than 90 days and since there was no submission of charge-sheet on due compliance of law, the accused person is entitled to be enlarged on statutory bail. Accordingly, the accused person be admitted to bail for a sum of Rs. 50,000.00 (Rupees fifty thousand) with two sureties of the like amount, one of whom must be local, having substantial means of immovable properties within the jurisdiction, to the satisfaction of the Special Judge, (N.D.P.S. Act), Alipore, Sputh 24-Parganas, on condition that while on bail, he shall report to the concerned Police Station thrice a week and shall not leave the jurisdiction of the Police station, without permission, except for attending Court proceedings.

4. It will never be interpreted by our order that we have said anything about the submission of the supplementary charge-sheet which remains within the domain of the Magistrate. He is to act in accordance with law. He is also permitted to take his own decision independent of the order passed by ourselves relating to supplementary charge-sheet. The records of the Court below be transmitted forthwith, in a sealed cover, by a special messenger by the learned Registrar, Appellate Side to the concerned Court. He is also to send a copy of the order sheet to the Deputy Controller (Narcotic), Lalbazar.

5. It appears on perusal of the record that serious lapses have been committed by the Investigating Officer while submitting the charge-sheet, although substantial materials were collected in respect of the case. The lapses committed by the investigating Officer in completing the charge-sheet may result in acquittal of the accused person. In the circumstances, for the ends of justice, we direct the Deputy Commissioner, (Narcotic) to start immediately, an enquiry against those persons who are responsible for committing serious lapses and to take disciplinary action in accordance with law.

Let plain copies of this order, countersigned by the Assistant Registrar (Court), be made available to the learned advocates for the parties. The learned Court below is to act upon it, if produced by any party.

A.B. Mukherjee, J.

6. I agree.