IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

Before: Hon'ble Justice Sugato Majumdar

CRR 3168 of 2012

I.A. No. CRAN/3/2014 (Old No. CRAN/4575/2014)

Kamal Ghosh & Anr.

Vs.

The State of West Bengal & Anr.

For the Petitioners	**:**	**Mr. S. N. Arefin,** **Mr. Partha Chakraborty,** **Ms. Disha Sukla.**
For the State	**:**	**Mr. Imran Ali,** **Ms. Debjani Sahu.**
Hearing concluded on	**:**	**21.03.2023**
Judgment on	**:**	**23.03.2023**

Sugato Majumdar, J.:-

The instant application is filed under Section 401 read with Section 482 of the Criminal Procedure Code challenging the impugned orders dated 24.06.2011, 19.07.2011, 17.08.2011, 17.01.2012, 24.02.2012, 26.03.2012, 26.04.2012, 28.05.212, 28.06.2012, 16.07.2012 passed by the Chief Metropolitan Magistrate in G. R. Case No. 191 of 2011 connected to

Section – H, Bowbazar Police Station Case No. 41 dated 16.01.2011 as well as order passed by the Metropolitan Magistrate, 3rd Court dated 17.07.2012.

The nutshell of grievances of the present Petitioner are that, firstly the Investigating Officer was allowed time beyond a period of six months in terms of various impugned orders passed by the Chief Metropolitan Magistrate without conforming to the provisions of Section 167 (5) of the Criminal Procedure Code.

Secondly, it is also the grievance of the Petitioner that the fact of the case does not disclose commission any offence which both the Chief Metropolitan Magistrate and the Metropolitan Magistrate, 3rd Court failed to consider.

Thirdly that after filing of charge sheet the Chief Metropolitan Magistrate transferred the case to the Metropolitan Magistrate, 3rd Court for taking cognizance without taking cognizance of the offence; the Metropolitan Magistrate, 3rd Court, however, took cognizance of the offence in terms of the order dated 17.07.2012 offending the provision of Section 190 of the Code of Criminal Procedure.

Mr. S. N. Arefin appearing for the Petitioners submitted that under Section 167 (5) of the Code of Criminal Procedure there is a specific time limit of six months to conclude investigation, from the date of arrest. This provision is applicable to the instant case, and the Magistrate is duty bound to make an order stopping further investigation into the offence. This is not done by the Chief Metropolitan Magistrate. The Chief Metropolitan

Magistrate continued to allow time in a mechanical manner. Therefore, according to him, the proceeding should be quashed. It is argued by the learned Counsel for the Petitioners that the Chief Metropolitan Magistrate committed an error is not taking cognizance of the offence and transferring the same to the Metropolitan Magistrate for taking cognizance.

It is further submitted by him that the Chief Metropolitan Magistrate failed to consider or apply the mind to understand that no *prima facie* case is made out against the Petitioners; the allegations are baseless for which the proceeding should be quashed.

Mr. Imran Ali appearing for the State submitted that there is no infirmity in the proceeding so far as taking cognizance under Section 190 is concerned. According to him, the Petitioner failed to make out a proper case in this regard. He further submitted that Section 192 of the Code of Criminal Procedure saves taking cognizance of the offence by the Magistrate. According to him, the application should be rejected.

I have heard rival submissions.

Under Section 167 (5) of the Code of Criminal Procedure, in any case triable by a Magistrate as a summons-case, if the investigation is not concluded within a period of six months from the date on which the accused was arrested, the Magistrate shall make an order stopping further investigation into the offence unless the officer making the investigation satisfies the Magistrate that for special reasons and in the interests of justice the continuation of investigation beyond the period of six months is

necessary. The provision unequivocally states that the Magistrate can stop investigation on contingency that the Investigating Officer has failed to satisfy the Magistrate that for special reasons and in the interests of justice the continuation of the investigation beyond the period of six months is necessary. There cannot be any automatic order without anything else on expiry of a period of six months from the date of arrest. The learned Counsel for the Petitioner, at the time of hearing candidly admitted that no step was taken or no petition was made before the Trial Court objecting to the impugned orders extending time for investigation. The Petitioner was silent at that time but suddenly the Petitioner woke up into the action after filing of the charge sheet on completion of the investigation, clubbing several actions against several courts together. Therefore, the objection regarding extension of time at this belated stage is not sustainable.

Section 190 (1) provides that any Magistrate of First Class may take cognizance of an offence upon receiving a) a complaint of facts which constitutes such offence, b) upon a police report of such facts, c) upon information received from any person other than Police Officer or upon his own knowledge that such offence have been committed. This case squarely falls within ambit of Section 190 (1) (b) of the Code of Criminal Procedure. In terms of the specific provisions of the statute, any Magistrate is empowered to take cognizance of the offence. Moreover, Section 460 (e) of the Code provides that if any Magistrate who is not empowered by law to do any of the following things entirely among others to take cognizance of an offence under Clause a or Clause b of Sub-section (1) of Section 190

erroneously in good faith, proceeding shall not be set aside merely on that ground. Therefore, even if it is assumed that there is an irregularity, the same is saved of Section 460 (e) of the Code of Criminal Procedure. Proceeding cannot be quashed.

So far as factual aspect of the case is concerned, consideration of charge is yet to be done. The Petitioner can agitate before the Trial Court that available materials do not disclose any offence. It is not that the Petitioner is bereft of any remedy. He has remedy which he should exercise at opportune moment, at the time of consideration of charge.

In nutshell, the instant revision application is not tenable and is dismissed on merit. The Trial Court is to consider charge within a period of one month from the date of receiving of this order.

The copy of this order may be sent to the Trial Court forthwith.

The instant criminal revision stands disposed of.

The instant revision is accordingly disposed of along with pending application, if any.

(Sugato Majumdar, J.)