

5 21.6.2019

**CIRCUIT BENCH OF CALCUTTA HIGH COURT
AT JALPAIGURI**

SM

C.R.R.26 of 2019

**Debasish Bose
Versus
The State of West Bengal & Anr.**

Mr. Amalesh Roy,
Ms. Suman Sehanabis Mondal,
Mr. Debarshi Dhar.
...for the petitioner.

Md. Subir Ahmed,
Mr. Hillol Saha Podder.
....for the opposite party no.2.

Mr. Arun Kumar Sarkar, APP.
.....for the State.

Affidavit of service be kept on record. Vakalatnama filed on behalf of the opposite party no.2 be kept on record.

By the instant application the petitioner has assailed the judgment and order dated 30th November, 2017 passed by the Additional Sessions Judge, 3rd Court, Cooch Behar in Criminal Revision No.16 of 2017 whereby the order dated 20th January, 2017 passed by the Additional Chief Judicial Magistrate, Mathabhanga, in C.R. Case No.40 of 2015 was set aside. By the aforesaid order dated 20th January, 2017 the Additional Chief Judicial Magistrate, Mathabhanga dismissed the complaint case under Section 203 of the Code of Criminal Procedure.

Aggrieved by the aforesaid order, the complainant/opposite party no.2 herein approached the Additional Sessions Judge by filing a revisional application being Criminal Revision No.16 of 2017 which was allowed on contest. The relevant portion of the order impugned is quoted hereinbelow.

“It is fact that in this case a complaint was lodged by one member of Panchayet Samiti of Mathabhanga Block –II against I/C of Mathabhanga P.S. The complaint was sent to S.P., Cooch Behar on the date of incident is established through S.D.P.O., Mathabhanga. Highhandedness of the police authority at the time of incident is established from the so-called uninterested witness. But ld. Court below totally ignored this portion of evidence of Mr. M.D. Lama and disbelieved the evidence of revisionist and her other witness. It is unfortunate that without proper scrutiny of the evidence the petition was dismissed with observation that the same was filed to save the skin of the revisionist from Mathabhanga P.S. Case No.284/15 dt. 17-08-15. The approach of ld. Court below in which the petition was disposed of in the form of dismissal is not just and proper and the same is thus, needed to be interfered in this criminal revision.”

Learned counsel for the petitioner submits that the revisional Court erred in law by setting aside the order of dismissal of the complaint under Section 203 Cr.P.C. as the aforesaid order does not suffer from any perversity or illegality. It is canvassed that the

factual aspects of the matter should not have been gone into and the evidence ought not to have been reappreciated.

Repudiating the above submissions, learned counsel for the opposite party no.2 countered that there has been no reappreciation of evidence by the revisional court. It is pointed out that the learned Magistrate totally disregarded the evidence of the complainant and the supporting witnesses and dismissed the complaint by placing reliance only on the evidence of M.D. Lama, the B.D.O. of the concerned Block.

It is true that a revisional Court cannot reappreciate evidence but it is within the domain of the revisional Court to examine whether correct parameters were applied while appreciating the evidence on record. In the case in hand, having considered the submissions with reference to the facts and circumstances of the case and the order impugned as well as the order passed by the Additional Chief Judicial Magistrate, it appears that material evidence was overlooked and was not taken into consideration by the learned Magistrate. The Additional Sessions Judge did not err in holding that the complaint petition was dismissed without proper scrutiny of the evidence. It appears that the statement on oath of the complainant and the supporting witnesses was discarded without proper reasoning. Relevant facts which transpired from the evidence were ignored. It is evident that the order of the learned Magistrate suffers from illegality and perversity being rightly set aside.

For the reasons aforestated, I am of the view that the judgment and order impugned warrant no interference.

The application being CRR 26 of 2019 is devoid of merit and is accordingly dismissed.

Urgent Photostat certified copy of this order, if applied for, be given to the applicant upon compliance of requisite formalities.

(Asha Arora, J.)

