

IN THE CIRCUIT BENCH OF CALCUTTA HIGH COURT AT JALPAIGURI
CRIMINAL REVISIONAL JURISDICTON

Present:- The Hon'ble Justice Manojit Mandal

C.R.R. No. 46 of 2019

Santanu Biswas

Versus

The State of West Bengal & another.

For the petitioner	: Mr. Nabanur Paul, Adv.
For the State	: Mr. Arun Kumar Sarkar, Adv. Mr. Abhijit Sarkar, Adv.
For the Opposite party No. 2	: None appears.
Heard on	: 19.08.2019
Judgment on	: 21.08.2019

Manojit Mandal, J.:- This criminal revisional application is directed against the Order No. 33 dated 05.10.2018 passed by the learned Judicial Magistrate, Darjeeling in N.G.R Case No. 1250A of 2014 (CIS Registration No. 1351 of 2015) arising out of Sadar Police Station G.D.E No. 944 dated 22.07.2014 whereby the learned Magistrate was pleased to discharge the accused under Section 239 of the Code of Criminal Procedure.

Being aggrieved by the said impugned order dated 05.10.2018, the petitioner has preferred this revisional application on the ground that the order passed by the learned Magistrate is bad in law and it should be set aside by this Court in the interest of justice.

Point for consideration:-

Is the order dated 05.10.2018 passed by the learned Judicial Magistrate, Darjeeling justified?

Decision with reasons:-

In the instant criminal revision, none appears on behalf of the Opposite party No. 2 to argue the case. In the circumstances, heard argument on behalf of the petitioner and the State of West Bengal.

Learned advocate appearing for the petitioner urged that the learned Judicial Magistrate, Darjeeling erred in law in discharging the Opposite party No. 2 from the case when in a summons case, the Magistrate has no power to drop proceedings, in absence of any specific provision in the Code of Criminal Procedure.

Learned advocate for the State urged that the order passed by the Judicial Magistrate is quite justified and it should not be set aside by this Court.

Having heard the learned advocate of the respective parties and on perusal of the materials on record, I find that petitioner lodged a written complaint on July 22, 2014 with the Inspector-in-Charge, Sadar Police Station, Darjeeling stating, *inter alia*, that he was assaulted by the Opposite party No. 2 with kicks. On receiving the said written complaint, the Inspector-in-Charge, Sadar Police Station, Darjeeling registered the Sadar

Police Station G.D.E No. 944 dated 22.07.2014 and sought for permission of the learned Chief Judicial Magistrate, Darjeeling for causing an enquiry under Section 155 of the Code of Criminal Procedure. After completion of the enquiry, the concerned Enquiry Officer submitted a non-FIR Prosecution Report being No. 933 of 2014 dated 20.08.2014 under Section 323 of the Indian Penal Code against the Opposite party No. 2.

Learned Chief Judicial Magistrate, Darjeeling on perusal of the Prosecution Report was pleased to take cognizance of the offences and issued summons against the Opposite party No. 2 on 26.08.2014. Opposite party No. 2 surrendered before the Court of the learned Chief Judicial Magistrate, Darjeeling and was released on bail. Subsequently, Learned Chief Judicial Magistrate, Darjeeling transferred the said case to the Court of learned Judicial Magistrate, Darjeeling for enquiry and disposal. Opposite party No. 2 preferred an application under Section 251 of the Code of Criminal Procedure on 27.09.2018 for the purpose of contesting the substance of accusation brought against him in the Prosecution Report filed by the Enquiry Officer of this case. The said application under Section 251 of the Code of Criminal Procedure, 1973 was taken up for hearing by the learned lower Court and by the impugned order, the learned Judicial Magistrate, Darjeeling was pleased to allow the said application of the Opposite party No. 2 and discharged the Opposite party No. 2 from this case.

In this case, Prosecution Report was submitted for offence punishable under Section 323 of the Indian Penal Code and as such, the case is summons triable in nature and the learned Magistrate issued process against the Opposite party No. 2 and, thereafter, without examining him under Section 251 of the Code of Criminal

Procedure, discharged him under Section 239 of the Code of Criminal Procedure. A case involving a summons case is covered by Chapter – XX of the Code of Criminal Procedure which does not contemplate case a stage of discharge like Section 239 of the Code of Criminal Procedure which provides for a discharge in a warrant case. So, the application seeking discharge filed by the Opposite party No. 2 was liable to be rejected.

In the circumstances, I hold that the order passed by the Judicial Magistrate, Darjeeling is not legal and justified and it calls for interference by this Court. So, I find merit in the revisional application and it should be allowed. Accordingly, the revisional application is allowed.

The Order No. 33 dated 05.10.2018 passed by the learned Judicial Magistrate, Darjeeling in connection with N.G.R Case No. 1250A of 2014 is set aside.

Learned Judicial Magistrate, Darjeeling is directed to proceed with this case in accordance with law as per observations made above.

Considering the circumstances, there will be no order as to costs.

Let a copy of this judgment be sent down to the Court below for information and taking necessary action.

Urgent photostat certified copy of this judgment be given to the parties, if applied for, upon compliance with requisite formalities.

(Manojit Mandal, J.)