

Sr. 52
14-12-2020
s. d.
ct, no.42

CRR 922 of 2020

In Re : **Sk. Mohammad Abdul Hai** **petitioner.**

In the matter of : An application under Section 482 of the
Code of Criminal Procedure.

Mr. Ajay Debnath
Mr. Sujit Saha

.....for the petitioner.

Mr. S. G. Mukherji, PP
Mr. Anwar Hossain

....for the State.

The petitioner is aggrieved by the fact that the charge in this case was framed without the application under Section 239 of the Code of Criminal Procedure being disposed of by the learned Magistrate.

Learned advocate appearing for the petitioner draws the attention of this Court to the Order dated 17th November, 2015 wherein the learned Magistrate was pleased to frame charge against the accused petitioner under Sections 419/420 of the Indian Penal Code.

In view of the aforesaid, Mr. Mukherji, learned Public Prosecutor, High Court, Calcutta was directed to appear in this matter.

Mr. Mukherji draws the attention of this Court to the order dated February 28, 2019 passed in C.R.R 2519 of 2018 wherein the present petitioners did not intend to proceed with the revisional application as the charge has already been framed in this matter by the learned Magistrate.

Accordingly, in the said revisional application, a co-ordinate Bench of this court was pleased to dispose of the revisional application as not pressed.

Subsequently, the petitioner again preferred a revisional application being CRR 2995 of 2019. The same was also disposed of by an order dated December 11, 2019 wherein it was observed *“the grievance expressed by the learned advocate for the petitioner relates from the initiation of the case till date which are issues of fact to be considered by the learned trial court”*.

The petitioner thereafter draws the attention of this court to the order dated 21st January, 2020 wherein the learned Magistrate was called upon to dispose of the petition under Section 239 of the Code of Criminal Procedure which was filed in the year 2007. The learned Magistrate after recording the contentions rejected such application under Section 239 of the Code of Criminal Procedure by the said order dated 21st January, 2020.

It is seen from the records available before this court that the case was initiated in the year 2007 and till

date evidence could not be recorded only because of the umpteen revisional application and the repeated attempts for the application under Section 239 of the Code of Criminal Procedure dated 19.05.2007 being preferred by the present petitioner/accused.

It is a settled position of law that once the petitioner was waived his right before this court having contended that the charge has been framed and accepted that the charge being framed, there is no scope to revert back to the stage of discharge under Section 239 of the Code of Criminal Procedure. To that extent, there was no scope for the learned Magistrate to take into account or consider the earlier application under Section 239 of the Code of Criminal Procedure which was rejected on 21st January, 2020, the same being deemed to be disposed of with the framing of charge on 17th September, 2015.

In view of the observations made above, no interference is called for by this Court and the revisional application is dismissed.

The learned Judicial Magistrate, 1st Court, Tamluk is directed to proceed with the evidence of this case without further delaying the proceedings on any petition/application made by either of the parties for extending the date of evidence. All efforts must be taken by the learned Magistrate for exhausting the process of law for bringing the witnesses on the date fixed.

The learned Magistrate is further directed to fix at least one date in a month so that the trial reasonably proceeds after 13 years. No unnecessary adjournment should be granted to either of the parties and all efforts must be taken to take the trial to its logical conclusion within a reasonable period of time.

The learned Registrar(Judicial), High Court, Calcutta is directed to communicate this order to the learned court below so that steps can be taken effectively by the learned trial court.

With the above observations, CRR 922 of 2020 is disposed of.

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

(Tirthankar Ghosh, J.)