

18.08.2021
Item no.5
Ct. No.34
CHC

C.R.R. No.213 of 2019

(Physical Hearing)

In Re: An application under Section 401 read with Section 482 of the Code of Criminal Procedure.

AND

In the matter of:-

Subrata (Sanku) Biswas
... petitioner

Mr. Asis Bhattacharyya
...for the petitioner

Mr. Saryati Datta
...for the petitioner
(appointed by High Court Legal Services Authority)

Mr. Abhisek Banerjee
...for the o.p. no.2

The present revisional application has been preferred against the order dated 19.11.2018, passed by the learned Judicial Magistrate, 5th Court, Howrah, in connection with Complaint Case No. 903C of 2015.

Learned advocate appearing for the petitioner draws attention of this Court to the impugned order which reflects that in spite of Hon'ble Supreme Court striking down the provision of Section 497 of the Indian Penal Code, the learned Magistrate was pleased to hold that as the offence was committed prior to delivery of the judgement, there is no bar in continuation of the

proceedings. The said interpretation of the learned Magistrate is against the settled principles of interpretation of law. To that effect the principles as has been enshrined in ***Maj. Genl. A. S. Gauraya & Anr. vs. S. N. Thakur*** reported in **1986 (2) SCC 709** is relevant. Moreover, the principles of law enunciates once a statute is struck down or a ratio has been settled by the Hon'ble Supreme Court, it would be presumed that the law from the very inception was as settled by the Hon'ble Supreme Court.

In view of the aforesaid, the provisions of Section 497 of the Indian Penal Code whether an offence has been committed prior to the order passed by the Supreme Court is irrelevant. The proceedings cannot be continued for alleged offences under Section 497 of the Indian Penal Code as the same has been struck down from the statute.

Learned advocate appears for the opposite party no.2 submits that there are other allegations, which have been surfaced in the complaint. To that effect learned advocate draws attention of this Court to the paragraph-'9' of the petition of complaint.

Having regard to the said submission, I direct the learned Magistrate to conduct further enquiry so far as the allegations which have been reflected in paragraph-'9' of the petition of complaint. If the learned Magistrate is satisfied that the offences as alleged are *prima facie* made out, the learned Magistrate may issue process afresh. However, it is made clear no proceedings under Section 497 of the Indian Penal Code would be allowed to continue.

With the aforesaid observations, C.R.213 of 2019 is disposed of.

Pending application, if any, is consequently disposed of.

Interim order, if any, is hereby vacated.

All parties shall act in terms of copy of this order downloaded from the official website of this Court.

(Tirthankar Ghosh, J.)