

Sr.111
06-09-2021
Subha.
Court no. 34

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE
(Via Video Conference)**

CRR 593 of 2020

In the matter of : Shyamali Samantapetitioner.

In Re : An application under Article 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure.

Mr. Sourav Chatterjee
Mr. Dipayan Kundu
....for the petitioner.

Mr. S. G. Mukherji, Id PP
Ms. Sreeparna Das
....for the State.

Pursuant to the settled principles of law, a de facto complainant has a right to address the court once the report under Section 173 of the Code of Criminal Procedure is filed before the jurisdictional court. The nomenclature of 'protest petition' is not unknown to a court of law and the grievance of the de facto complainant is to be ventilated by way of such an application.

The record reflects that on 09.09.2018 when the father-in-law Panchanan Pradhan and mother-in-law, Pratima Pradhan were discharged in the chargesheet so filed by the

investigating officer and such discharge was accepted by the learned Magistrate, it was incumbent upon the learned Magistrate to bring it to the notice to the de facto complainant, provide her an opportunity and thereafter decide whether the discharge should be accepted or not. There was non-compliance at this stage and the case was thereafter committed to the Court of Sessions.

When the same came to the knowledge of the de facto complainant. The de facto complainant preferred such an application before the learned trial court being the learned Additional Sessions Judge, Fast Track Court, Haldia, Purba Medinipur and the learned Sessions Court by accepting the submission advanced by the Public Prosecutor held that such an application in the nature of Section 173(8) of the Code of Criminal Procedure would lie before the Magistrate and refused the prayer. The approach is too technical. The Sessions court in seisin of a matter is to decide an issue until and unless there is statutory bar.

The learned court should have taken into account the right of the de facto complainant which was taken away behind her back by not providing her an opportunity.

In view of the ignorance expressed by the learned Magistrate in not affording an opportunity and the learned Sessions Court rejecting the prayer on too technical grounds, I direct the learned Sessions Court to reconsider the application dated 15.11.2018 under Section 173(8) of the Code of Criminal

Procedure on the merits of the application as to whether the prayers so advanced requires a further investigation or not.

Accordingly, the order dated 7th January, 2019 passed by the learned Sessions Judge, Fast Track Court, Haldia to the extent of the application under Section 173(8) of the Cr. P.C being rejected is concerned is set aside. The learned Sessions Court would adhere to the directions passed above.

Accordingly, present revisional application being CRR 593 of 2020 is allowed.

The interim order passed earlier so far as the proceedings are concerned are hereby vacated.

The learned Sessions Court is directed to act on the server copy of this order duly downloaded from the official website of this court.

(Tirthankar Ghosh, J.)