

23.08.2021

Item No.1
Ct.No.34
dc.

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION**

C.R.R. 503 of 2017
(Via Video Conference)

Radha Krishna Gayen
versus
The State of West Bengal & Anr.

In Re: An Application under Section 401 read with Section 482 of the Code of Criminal Procedure, 1973.

Mr. Aniket Mitra,
Mr. Lakshminath Bhattacharya ... For the Petitioner.

Mr. Arijit Ganguly,
Ms. Manisha Sharma ... For the State.

Mr. Saibal Mondal,
Ms. Nibedita Chakraborty ... For the Opposite Party No.2.

The investigating officer of the case is present in Court. He has filed a report expressing his unconditional apology. The reasons so assigned are accepted by this Court. His further appearance before this Court is dispensed with. The report dated 23.08.2021, so submitted, be kept with the record.

The original case diary has been produced by Mr. Arijit Ganguly, learned advocate appearing for the State. The same is perused and returned back. It appears from the case diary that certain photostat copies of receipts and exhibits were handed over for which it could not be definitely verified regarding the signature by the investigating officer. As such, the conclusion arrived at by the investigating officer cannot be interfered with at this stage.

However, Mr. Aniket Mitra, learned advocate appearing for the petitioner intends to hand over the original receipts which are in custody of the *de facto* complainant.

Having regard to the fact that the investigating agency has exhausted the energy and thereafter came to this conclusion and *prima facie* it appears that the original documents are in custody of the *de facto* complainant, I am of the view that if an application under Section 200 of the Code of Criminal Procedure is preferred by the *de facto* complainant, the learned Magistrate after conducting an enquiry under Section 202 of the Code of Criminal Procedure would decide whether the case for issuance of process has been made out or not.

Needless to state that the learned Magistrate will independently consider the merits of the complaint case which if advised and so filed by the *de facto* complainant and should not automatically issue process without applying his judicial mind.

The order dated 06.12.2016 has been brought to my notice. In the said order, it is reflected that the learned Magistrate was pleased to accept the final report so filed by the investigating agency. However, in view of the decision of the Hon'ble Supreme Court in ***Pramatha Nath Talukdar & Anr. Vs. Saroj Ranjan Sarkar*** reported in ***AIR 1962 SC 876*** filing of a complaint cannot be a bar even after the report under Section 173 of the Code of Criminal Procedure is accepted by the learned Magistrate and the *de facto*

complainant is in possession of the materials which were not available to the investigating agency.

With the aforesaid observations, CRR 503 of 2017 is disposed of.

Interim order, if any, is hereby vacated.

All pending connected applications, if any, are consequently disposed of.

All parties shall act on the server copy of this order duly downloaded from the official *website* of this Court.

(Tirthankar Ghosh, J.)