

Sr. 6
05-01-2021
s. d.
ct, no.42

CRR 827 of 2020
with
CRAN 1 of 2020(Old CRAN No. 1048/2020)

Goutam Mondal and anr.

-versus-

The State of West Bengal

In the matter of : An application under S.401 read with S.482 of the Code of Criminal Procedure filed on 28th February, 2020 in connection with Namkhana P.S. Case No.80 of 2009 dated 29.08.2009(G. R. Case No. 897 of 2009) under Ss.5 & 7 of the Immoral Traffic(Prevention) Act, 1956 pending for disposal before the Learned Additional Chief Judicial Magistrate, Kakdwip, 24Pgs(S).

Mr. Tilak Mitra
Mr. Bani Brata Datta

.....for the petitioners.

Mr. Madhusudan Sur, APP
Mr. Manoranjan Mahata

....for the State.

In Re : CRAN 1 of 2020(Old CRAN 1048 of 2020)

Learned advocate appearing for the petitioners submits that there has been a delay in preferring the revisional application which were beyond their control and to that effect reasons have been assigned in Paragraph 8 of the revisional application under Section 5 of the Limitation Act, 1963.

Having regard to the grounds so reflected thereby praying for condonation of delay in the application filed by the petitioners, the same are sufficient. As such, the delay as prayed for is condoned.

Accordingly, CRAN 1 of 2020 (Old CRAN No. 1048 of 2020) is allowed.

Re : CRR 827 of 2020

This revisional application has been preferred for quashing of the order dated November 15, 2019 passed by the learned Additional Chief Judicial Magistrate, Kakdwip, District 24 Parganas(South). The impugned order reflects that the learned court has applied its mind and as such categorically observed that no case under Section 7 of the Immoral Traffic(Prevention) Act, 1956 has been made out. By the impugned order, the learned Magistrate was pleased to observe that the statement of the S.D.P.O recorded under Section 161 of the Code of Criminal Procedure prima facie makes out a case under Section 5 of the said Act against the accused persons.

The learned advocate for the petitioners reiterates another contention that the origination of the case relate to a dispute regarding parking.

Mr. Sur, learned Additional Public Prosecutor along with Mr. Mahata, learned advocate appearing for the State opposes the contention so advanced by the learned advocate for the petitioners.

I have considered the rival submissions as well as gone through the order passed by the learned Additional chief Judicial Magistrate, Kakdwip.

On appreciation of the same, I am of the opinion that the learned court had applied its mind and thereafter arrived at its conclusion.

So far as the issue of parking which has been raised by the learned advocate for the petitioners is concerned, the same is a question of fact which cannot be agitated at this stage and as such, the learned Magistrate did not commit any error while refusing to entertain or consider such plea. The earlier order reflects that the next date was fixed for framing of charge and till date charge has not been framed. Having considered the aforesaid submission, I am of the opinion that the petitioners should be afforded another opportunity before the learned court for agitating the applicability of Section 5 of the Immoral Traffic(Prevention) Act, 1956 at the time of framing of charge.

Needless to state that I have not gone into the merits of the applicability of the said Section as the copies and documents under Section 207 of the Code of Criminal Procedure were not available before this Court. The learned

court would assess the materials and independently arrive at its own finding.

With the aforesaid observations, CRR 827 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.)