

CRR 1373 of 2021
with
CRR 333 of 2017

In re : Applications under Section 482 of the Code of Criminal Procedure, 1973.

In the matter of : **Shyamal Dey**

..... petitioner

Mr. Ranjan Kali
Ms. Mitul Chakraborty
Mr. Sukanta Ghosh
Mr. Prateep Bera

.....For the petitioner

Mr. Debkumar Sen
Mr. Sarada Prasad Nandan

.....For the opposite party no. 2

In the revisional application being CRR 333 of 2017, the petitioner has challenged an order of conviction dated January 8, 2014, thereby sentencing the petitioner to suffer simple imprisonment for a term of one year and to pay fine amount of Rs.14,00,000/-. Learned Magistrate in the Court below further directed that in default of the compliance of the said order dated January 8, 2014, the petitioner will suffer simple imprisonment for a further term of four months.

By an order dated February 6, 2016, passed in the said revisional application, this Court directed that the order of sentence and fine imposed upon the petitioner should remain suspended for a period of twelve weeks subject to the petitioner appearing before the learned trial Court and depositing a sum of Rs.8,00,000/- within a fortnight and upon his appearance, the petitioner shall be released on bail to the satisfaction of the learned trial Court till the disposal of the petition.

It appears that thereafter a petition was filed on behalf of the complainant, the opposite party no. 2, for compromise of the case.

That compromise application was taken up for hearing before the learned Judicial Magistrate in the Court below and by an order dated June 18, 2021, the learned Magistrate observed that the petitioner had not deposited the fine amount of Rs.14,00,000/- before him in terms of an order of conviction dated January 8, 2014 and, therefore, took the petitioner into custody for suffering the sentence.

Mr. Ranjan Kali, learned advocate, appearing for the petitioner and Mr. Debkumar Sen, learned advocate appearing for the opposite party no. 2 submit that in passing the order dated June 18, 2021, the learned Magistrate has failed to take into consideration the fact that the entire amount of Rs.14,00,000/- was paid.

Before this Court, an affidavit has been filed on behalf of the opposite party no. 2, wherein it has been admitted that the petitioner has paid the entire amount of Rs.14,00,000/- by way of two demand drafts being 525004 dated June 4, 2021 and 524990 dated April 26, 2021. Let such affidavit be kept with the records.

The offence committed under the Negotiable Instruments Act, 1881 has been made compoundable by operation of Section 147 of the said Act.

It appears that the learned Magistrate in the Court below has failed to appreciate the proper scope of Section 147 and also the fact that the opposite party no. 2 had admitted that the entire amount of fine has been paid by the petitioner.

In view of the admitted facts by the parties before this Court, I allow the revisional application being CRR 333 of 2017, by setting aside the order of conviction dated January 8, 2014 passed in Complaint Case No. 11032 of 2007 passed by the learned Judicial Magistrate, 10th Court at Alipore, 24-Parganas (South).

The revisional application being CRR 1373 of 2021 has been preferred challenging the order dated June 18, 2021 passed by the learned Judicial Magistrate. In view of the facts noticed above, the said order dated June 18, 2021 is also set aside.

All parties including the relevant jail authority shall act on the server copies of this order duly downloaded from the official website of this Court.

(Kausik Chanda, J.)