

Item no. 07

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

Present:

The Hon'ble Justice Ananda Kumar Mukherjee

CRR 1382 of 2019

Dr. Ishan Ghosh

vs.

Dr. Sumana Ghosh (Majee) & anr.

For the petitioner : Mr. Ataur Rahman

For the opposite party (State) : Mr. Saswata Gopal Mukherjee, learned P.P.
Ms. Faria Hossain
Mr. Anand Kesri

Heard on : 21.12.2021

Judgment on : 22.12.2021

Ananda Kumar Mukherjee, J.:

This application for revision under Article 227 of the Constitution of India has been filed by the petitioner being aggrieved and dissatisfied with the delay in completing trial in connection with Asansol (south) P.S. Case No. case 118/06, corresponding to G.R. Case No. 641/06, pending before the learned Judicial Magistrate, 4th Court, Asansol, Paschim Burdwan.

In a nutshell, the case of the petitioner husband is that the opposite party No. 2 is his wife who has lodged a complaint against him before the learned Additional Chief Judicial Magistrate, Asansol, Paschim Burdwan under Section 156(3) of the Code of Criminal Procedure being Complaint Case No. 441/06. On the order of learned Additional Chief Judicial Magistrate the complaint was registered as Asansol South Police Station case No. 118/06 under Section 498A/406/120B of the Indian Penal Code and Section 3 and 4 of the Dowry Prohibition Act against three accused persons, the petitioner being one of them. Dr. Anupa Ghosh and Pran Gobinda Ghosh are two other accused persons, of whom Pran Gobinda Ghosh has expired on 03.12.2010. The investigating officer submitted charge sheet on 31.08.2007 and trial started on 12.10.2012. Out of the charge sheeted witnesses, learned Magistrate has already examined six prosecution witnesses and the case is fixed for further evidence of charge sheeted witnesses 7, 8 and 9 on 06.12.2018. It is the case of the petitioner that one Sampa Bose, the second investigating officer was examined in chief in part as PW 7 on 28.02.2019. Thereafter, several dates were fixed for further examination of PW 7 but she did not turn up. It is contended by the petitioner that the matter is pending for 13 years, causing harassment to the petitioner.

Being aggrieved and dissatisfied with the orders dated 28.02.2019 and 10.04.2019 passed by the learned Judicial Magistrate, 4th Court, Asansol, Paschim Burdwan adjourning the case for further

hearing of PW 7, it is urged that the learned Magistrate should be directed to exhaust the process of evidence and complete the trial at the earliest.

Learned counsel appearing on behalf of the appellant petitioner submitted that in exercise of the supervisory jurisdiction of this court under Article 227 of the Constitution of India, which is co-extensive with the power vested under Section 483 of the Code of Criminal Procedure, it is necessary that the trial procedure should be completed at the earliest. Learned counsel for the State submits that opposite party No. 2 will lend all cooperation in the matter of expeditious trial of this case and any direction as deemed proper may be made in this regard. Opposite party No. 1 has not appeared in this case since the inception even though there was proper service on opposite party No. 1.

I have considered the submissions made by the learned counsel for the parties present and perused the order passed by the learned Judicial Magistrate on 28.02.2019 and 10.04.2019. It appears from the said order that all the accused persons on court bail were present and one witness Sampa Bose, the second investigating officer was examined on 28.02.2019 in part as PW 7 and the evidence of the witnesses was deferred on the prayer of the prosecution fixing 10.04.2019 for further examination in chief of PW 7. By filing the supplementary affidavit, the petitioner has produced orders passed by the learned Judicial Magistrate dated 10.04.2019; 06.07.2019;

03.08.2019; 19.10.2019; 04.01.2020; 28.01.2020; 15.02.2020; 05.03.2020; 27.03.2020; 16.09.2020; 23.03.2021; 07.08.2021 and the last order dated 20.11.2021 respectively. The order dated 10.04.2019 reveals that all the accused persons were present but no prosecution witnesses turned up and summons were again issued to PW 7 fixing the case on 06.07.2019. The case was fixed thereafter on 11 dates but on none of those dates, PW 7 who was examined in chief in part turned up before the court. From 27.03.2020 till 07.08.2021, the court could not take up the hearing due to pandemic situation. Order dated 20.11.2021 reveals that even after service of summons upon CSW 7, the witness who is Police Personnel did not turn up. It is evident that on earlier occasion, there was a direction by the Hon'ble court for expeditious trial of the case but there has been no progress.

I find that the Code of Criminal Procedure has adequately empowered a Magistrate to enforce attendance of witnesses. Summons may be issued and served according to Section 62, 64, 66 and 67 of the Code of Criminal Procedure as may be appropriate. In the event, the court is satisfied that the witnesses is not complying with the summons, he is empowered under Section 87 of the Code of Criminal Procedure to issue warrant of arrest in lieu of or in addition to summons which is bailable at the first instance and in appropriate cases, the Magistrate can also issue witnesses warrant of arrest against the witness.

In the present case under consideration, the Magistrate is yet to exhaust the process under the Code of Criminal Procedure for

enforcing attendance of the witnesses. There has been an inordinate delay in trial of this case. I find that CSW 7, 8 and 9 are all Police witnesses and appropriate steps should have been taken by the learned Magistrate for enforcing their attendance by issuing summons and thereafter, if necessary, bailable warrant of arrest and warrant of arrest through their superior Police Officers so that the trial is concluded in time.

Section 483 of the Code of Criminal Procedure, has vested this court with the supervisory jurisdiction over the court of learned Judicial Magistrates, subordinate to it as to ensure that there is an expeditious and proper disposal of cases by such Magistrates. Furthermore in exercise of the inherent jurisdiction under Section 482 of the Code of Criminal Procedure it is necessary to see that there is no abuse of the process of court and to pass order necessary to secure the ends of justice.

The provisions of Article 227 of the Constitution of India also vests this court with the supervisory jurisdiction over the subordinate courts and tribunals throughout the territories in relation to which it exercises jurisdiction.

In view of the above facts and circumstances and the legal principles this appears to be a fit case to invoke the jurisdiction vested Art 227 of the Constitution of India.

Considering the facts and circumstances of the case, it appears to me that where inordinate delay cause sufferings to the

litigants, it should be the earnest endeavour on the part of the learned Judicial Magistrate, 4th Court, Asansol, Paschim Burdwan to complete the trial on exhausting the process for attendance of witnesses as discussed above and complete the trial preferably within three months on communication of this judgment.

Instant revisional application is accordingly **disposed of** on contest against opposite party No. 2 and ex parte against Opposite Party No. 1.

Let a copy of this judgment be sent down to the learned Judicial Magistrate, 4th Court, Asansol, Paschim Burdwan for information and necessary compliance in connection with GR case No. 641/2006 pending before him.

Urgent certified photostat copy of this judgment order, if applied for, be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(Ananda Kumar Mukherjee, J.)

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