

02.08.2021
Item no.34
Ct. No.34
CHC

C.R.R. No.1462 of 2017
IA NO: CRAN/6/2019 (Old No: CRAN/3959/2019)
(not in file)

(Via Video Conference)

In Re: An application under Sections 397, 401 and 482 of the Code of Criminal Procedure, 1973.

AND

In the matter of:-

Junaid Ahmed
... petitioner

Mir Anuruzzaman

...for the petitioner

Affidavit-of-service filed be kept with record.

In spite of service, none appears on behalf of the opposite party.

It is reflected from the order dated 16.3.2017 that the complainant intended to tender certain documents for completion of cross-examination. The said documents are 1) Letter addressed to the Post Master, Tiljala Post Office dated 16.08.2016, 2) Letter dated 16.08.2016 addressed to the Director, G.P.O. Kolkata and 3) Reply dated 24.08.2016 from Tiljala Post Office. Going by the nature of documents which have been referred to therein the documents could not have been created by the complainant after

initiation of the case and the documents existed prior to the evidence-in-chief and cross-examination of the witness concerned. It has been settled by the Hon'ble Apex Court that if for mismanagement of the lawyer certain documents could not be adduced in evidence and produced before the court at the relevant time when the evidence of the witness was progressing the litigant should not be allowed to suffer for the same. As such, the prayer advanced by the complainant do not appear to be in derogation of the provisions of the law. The prayer under Section 311 of the Code of Criminal Procedure so rejected by the learned Magistrate is hereby set aside.

Learned Magistrate would allow the complainant to adduce three aforesaid letters along with the postal endorsements/envelope acknowledgements if so required for considering those documents as primary evidence in the case. There is no scope for the accused to be prejudiced as these were documents already existing and relates to proof of service. However, it will be open to the court to assess at the stage of final arguments regarding the authenticity of the documents if there are suspicion to that effect. Accordingly, order dated 16.03.2017 is set aside.

The revisional application being C.R.R.1462 of 2017 is allowed.

Pending application, if any, is consequently disposed of.

Interim order, if any, is hereby vacated.

Learned Magistrate is directed to take effort for completing the trial within a reasonable period of time.

All parties shall act in terms of copy of this order downloaded from the official website of this Court.

(Tirthankar Ghosh, J.)