

17.11.2021

Item No.37
Ct.No.34
dc.

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

C.R.R. 1600 of 2021
(Via Video Conference)

Chandra Mani Shukla
versus
The State of West Bengal & Ors.

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

Mr. Ayan Bhattacharjee,
Mr. Satadru Lahiri,
Mr. Vikash Singh,
Mr. Rahul Sharma ... For the Petitioner.

Mr. S. G. Mukherjee, Ld. P.P.,
Mr. Madhusudan Sur,
Mr. Dipankar Paramanick ... For the State.

The petitioner is aggrieved by the order of the learned Magistrate refusing the prayer for further investigation. Learned advocate appearing for the petitioner submits that the application under Section 173(8) of the Code of Criminal Procedure was filed without the materials collected by the investigating agency being handed over to the present petitioner/*de facto* complainant.

Mr. Mukherjee, learned Public Prosecutor appearing for the State, on instructions, submits that copies under Section 207 of the Code of Criminal Procedure have already been served upon the accused. Similar set of papers be handed over to the *de facto* complainant for enabling him to take out a proper application.

As the investigation of the case is still in progress, the documents are restricted to only Section 207 of the Code of

Criminal Procedure. On receipt of such documents, if so advised, the petitioner would be at liberty to take out an application under Section 173(8) of the Code of Criminal Procedure before the learned Sessions Court which is in seisin of the trial of the case. The order dated 29.03.2021 passed by the learned Additional Chief Judicial Magistrate, Barrackpore is set aside.

The petitioner would be at liberty to take out an application under Section 173(8) of the Code of Criminal Procedure before the learned trial court which is in seisin of the matter. The learned trial court would independently consider whether such prayer would be in the interest of justice and independently consider the issues including the discharge of the accused persons which have raised grievance to the petitioner/*de facto* complainant and dispose of the same in accordance with law within a period of 40 days of filing of the same.

Needless to state that the earlier rejection of the prayer under Section 173(8) of the Code of Criminal Procedure should not have any bearing on subsequent consideration by the learned trial court and it would be pertinent to state that this Court has not gone into the merits of the case, but granted liberty to file an application under Section 173(8) of the Code of Criminal Procedure to the *de facto* complainant only on the issue that according to the dictate of the Supreme Court in ***Jakia Nasim Ahesan & Anr. Vs. State of Gujarat & Ors.*** reported in **(2011) 12 SCC 302**, the *de facto* complainant

was not supplied with documents relied upon by the prosecution and as such, he could not effectively build up issues for consideration by the learned Magistrate.

The aforesaid order would not be any bar in continuation of the investigation which has been submitted on behalf of the prosecution.

With the aforesaid observations, the revisional application being CRR 1600 of 2021 is disposed of.

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.)