

09.04.2021
Item no.11
Ct. No.42
CHC

C.R.R. No.2247 of 2019

(Physical Hearing)

In the matter of:-

Mrs. Reba Kalyan Mitra
.....petitioner

Mr. Debashish Roy, Sr. Advocate
Mr. Avik Ghatak,
Ms. Trini Joarder
...for the petitioner

Mr. Sandipan Ganguly, Sr. Advocate
Ms. S. Patel
...for the opposite party

The impugned order dated 21st June, 2019, passed by the learned Metropolitan Magistrate, 17th Court, Calcutta, in connection with Complaint Case No.8660 of 2006, requiring the Commissioner of Police, Kolkata, to execute the Warrant of Arrest issued against the petitioner on 24th July, 2015 and re-enforced the same on 27.3.2017 is the subject of challenge in this revisional application.

Mr. Roy, learned Senior Advocate representing the petitioner submits that the petitioner is a 75 years old woman having several ailments, which have been sufficiently mentioned in the medical report dated 7th January, 2019, submitted to Court after the required medical examination of the petitioner. The last medical examination by the Committee Members of the hospital of Mumbai was held on 22nd January, 2019 at 2:45 P.M. at her residence.

Upon reviewing medical condition of the petitioner, the petitioner was declared to be not fit for travel by herself but can travel with the assistance.

According to doctor's opinion, the petitioner is a 75 years old woman having right side hemiparesis with mild reduce fluency of speech due to which she is wheelchair bound and needs constant assistance for activities of daily living.

Mr. Roy, learned Senior Advocate frankly submits that the health condition of the petitioner is highly alarming and has been further deteriorated and the petitioner is not in a position to travel so as to ensure her appearance before the court at the stage of her examination under Section 251 Cr.P.C.

Mr. Sandipan Ganguly, learned Senior Advocate representing the opposite party contends that there is a cheaqured antecedent of the petitioner, and the petitioner did not choose to ensure her appearance before the court, when she was even quite competent to appear before the court on the stipulated date, so far fixed earlier.

Admittedly, the case is appearing at the stage, when the petitioner is supposed to be confronted with the allegations raised against her under Section 251 Cr.P.C. since 2015, though the case was originally instituted in the year 2006. There is also direction in this case passed by coordinate Bench of this court requiring expeditious disposal of this pending case. The direction as regards expeditious disposal, according to Mr. Ganguly has proved to be a blank sound without any meaningful purpose due to non-cooperation of the petitioner, manifested from her established conduct.

Mr. Ganguly, however, concedes the deteriorating the health condition of the petitioner and that too at the COVID stage.

Upon considering the long pendency of the case Mr. Ganguly is honest in his submission that examination of the accused person under Section 251 Cr.P.C. may be done without insisting upon the presence of the petitioner for a changed in circumstances, which may be allowed to be done through the presence of the entrusted learned advocate of the petitioner for the purpose in this case, upon furnishing an undertaking of the petitioner to the satisfaction of the court that petitioner would not dispute her identity as the particular accused in the case, and that a counsel on her behalf would be present in court and that she has no objection in taking evidence in her absence.

Mr. Ganguly further submits that the case needs to be disposed of irrespective of the health condition of the petitioner.

Reliance was placed by Mr. Ganguly on a decision reported in **(2001) 7 SCC 401** delivered in the case of ***Bhaskar Industries Ltd. vs. Bhiwani Denim & Apparels Ltd. and others*** to fortify his stand that the Magistrate is empowered to record the plea of the accused even when his counsel make such plea on behalf of the accused in a case where personal appearance of the accused is dispensed with under Section 317 of the Code of Criminal Procedure.

Going a step further Mr. Ganguly in the interest of expeditious disposal of this case submits that examination of accused person under Section 313 Cr.P.C. may be done exempting

the petitioner from making her personal appearance before the court through her learned advocate for the purpose.

By reason of such candid submission of Mr. Ganguly, which the court must appreciate in view of the present scenario of the entire country suffering from COVID 19 situation, it would be not twice to insist upon securing presence of the petitioner in the interest of making examination of the petitioner under Section 251 Cr.P.C.

The impugned order is thus set aside with direction upon the learned court below as follows:-

The petitioner be allowed to be confronted with the allegations under Section 251 Cr.P.C. through her learned advocate upon furnishing an undertaking to the satisfaction of the learned court below that she would not dispute with her identity at any point of time in the case and that a counsel on her behalf would be present in Court and that she has no objection in taking evidence in her presence.

It is clarified that upon completion of such formality, the case may be proceeded further soon after examination of the accused person under Section 251 Cr.P.C. aiming at ensuring expeditious disposal of the case upon sensing the true purport of the message already conveyed in the order of the High Court directing to ensure expeditious disposal of the case.

Mr. Ganguly at this stage proposes for a direction to be given so that logical conclusion of this case may be reached within a reasonable period of time as there are few witnesses to be examined in this case.

Since case was originally instituted in the year 2006, bearing in mind the long pendency of this case, let there be a direction upon the learned court below to ensure expeditious disposal of a pending case within a reasonable period of time preferably within a period of one year from the date of communication of this order.

Learned Senior Advocate, Mr. Roy is however, requested to cooperate with the learned court below so that the trial of the case may be smoothly conducted taking support and cooperation from both the parties.

With this direction/observation, the instant revisional application stands disposed of.

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

Urgent Xerox certified copy of this order, if applied for, be supplied to the parties, subject to compliance with all requisite formalities.

(Subhasis Dasgupta, J.)