

20.07.2021
Item no.9
Ct. No.34
CHC

C.R.R. No.2992 of 2018

(Via Video Conference)

In Re: An application under Section 482 of the Code of Criminal Procedure, 1973.

AND

In the matter of:-

Poly Das @ Poty Das
@ Polly Das

... petitioner

Mr. Ayan Bhattacharjee,
Mr. Prattay Kumar Khan

...for the petitioner

Affidavit-of-service filed be kept with the record.

Mr. Bhattacharjee, learned advocate appearing for the petitioner draws attention of this Court to the finding of the learned Magistrate in the order dated 08.01.2018.

Learned Magistrate after examination of the complainant and his witness was pleased to observe that dispute relates to breach of agreement which is essentially civil in nature and the complainant should approach the civil forum. Thereafter, the learned Magistrate proceeded to dismiss the application under Section 203 of the Code of Criminal Procedure.

Assailing such order, the complainant approached the learned Chief Judge, City Sessions Court in revision and the learned Chief Judge was pleased to dismiss the revisional application and

affirmed the order passed by the learned Magistrate, 16th Court, Calcutta in Case No. CNS/283 of 2017.

On an appreciation of the subject-matter of the case, I am of the view that there may be cases which may have civil dispute but on the self-same fact a litigant cannot be deprived of the right to pursue a criminal litigation.

I have perused the initial deposition of Polly Das as also that of Ayan Ghosh which has been enclosed alongwith the revisional application. From the initial deposition two facts are glaring, one there was acceptance of money for delivery of a flat and secondly, the flat owner let out to somebody else. The accused also refused to repay money which he has accepted by way of advance. The Court while adjudicating such matters are supposed to take into consideration the factum of representation/misrepresentation and parting with the property which was a part of the commitment. It is also onus of the trial court to consider a case at the stage at which the Court has been approached. There may be cases, where the Court may have a perception that the chances of conviction are remote but the same do not automatically prevent the Court from issuing the process and assessing the facts which would be brought before the Court subsequently after adjudication (by way of evidence).

Having regard to the fact that observation was made at the stage of issuance of process, I am of the view that the same requires to be reconsidered by the learned Magistrate. Accordingly, the order dated 08.01.2018 passed by the learned Metropolitan Magistrate, 16th Court, Calcutta so affirmed by the

learned Chief Judge, City Sessions Court in Criminal Revision No.30 of 2018 is hereby set aside.

The petitioner is directed to appear before the learned Metropolitan Magistrate on 6th of August, 2021 and bring the order of this Court to the notice of the learned Magistrate. Learned Magistrate will fix a subsequent date within a period of two weeks thereafter for passing an order on the basis of the observations made by this Court.

With the aforesaid observations, C.R.R.2992 of 2018 is disposed of.

Pending application, if any, is consequently disposed of.

Interim order, if any, is hereby vacated.

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

(Tirthankar Ghosh, J.)