

04.03.2021
tkm/ct 35
sl no. 1

**C.R.R. 3703 of 2019
(Via video conference)**

In Re : Sanjay Kumar Gupta & Anr.

.....petitioners

Mr. Ayan Bhattacharjee
Mr. Sharequl Haque
Mr. A. R Tiwary

..... for the petitioners

Mr. M Sur, Id APP
Mr. D Paramanick

..... for the State

Mr. Kallol Mondal
Mr. K Ray
Ms. A Chel
Mr. Anamitra Banerjee

..... for the OP no. 2

Parties are represented.

Learned advocate for the petitioners prays for quashing of proceeding of GR case no. 235 of 2017 under sections 447/380/427/506/34 IPC pending before the learned Additional Chief Judicial Magistrate, Bidhannagar including orders dated 1.6.2019 and 19.6.2019.

It is submitted on behalf of the petitioners that the opposite party no. 2 who is the full-blood brother of petitioner no. 1, lodged complaint against the petitioners before the Bidhannagar East P.S which was registered as P.S case no. 29/2017 dated 19.3.2017. After completion of investigation, final report was submitted exonerating the petitioners on 30.5.2018. Opposite party no. 2/de facto complainant filed a Naraji petition against the said report which was initially rejected by the learned trial court which

consequentially accepted the final report filed by the investigating agency. Subsequently, the said order was recalled on prayer of the de facto complainant and the learned trial court, after hearing the de facto complainant and learned Additional Public Prosecutor, recalled its previous order and directed further investigation in allowing the Naraji application.

It is evident from the orders impugned that when the order rejecting the Naraji petition was recalled and prayer of the de facto complainant was allowed, the petitioners/accused persons were not given an opportunity to place their case before the learned trial court. The orders impugned were passed in absence of the petitioners whose interest, it is needless to say, was affected adversely by virtue of the said orders. Copies of the petitions were also not served upon the petitioners.

It is trite law that the parties to an application should be given an opportunity of being heard before such application is decided. In the present case this has not been done.

The opposite parties concede to the fact that orders impugned were granted without the petitioners being given an opportunity of hearing. On that score alone, the orders impugned dated 1.6.2019 and 19.6.2019 are required to be set aside.

Accordingly, CRR 3703 of 2019 is allowed.

Record be sent back to the learned trial court with a direction to consider the application for recall and the Naraji petition filed by the de facto complainant after giving an opportunity of hearing to both the petitioners as well as learned Additional Public Prosecutor.

Copy of the petitions be also served upon the petitioners.

It is made clear that this court has not gone into the merits of either of the petition and the learned trial court shall dispose of both the applications on merit in accordance with law without being influenced by any observation made in this order.

Copy of the order be sent to the learned trial court for information and necessary action.

Urgent certified website copy of this order, if applied for, be supplied to the parties upon usual undertaking.

(Suvra Ghosh, J.)