

CRR 3794 of 2019

**Ismail Sk.
Vs.
State of W. B.**

In Re: An application under Article 227 of the Constitution of India read with Sections 401/397 and 482 of the Code of Criminal Procedure, 1973.

**Mr. Abhimanyu Banerjee
..... For the petitioner
Mr. S. G. Mukherjee, Ld. P. P.
Mr. Arijit Ganguly
....For the State**

The report submitted by the learned Public Prosecutor is taken on record.

This is an application under Article 227 of the Constitution of India seeking quashing of a proceeding in connection with N. D. P. S. case no. 375 of 2017 now pending before the learned Additional District and Sessions Judge, 2nd Court cum Special Court, Berhampore, Murshidabad.

Learned advocate at the very threshold of this case frankly submits that there is nothing justifying continuance of the instant proceeding on the ground that principal accused involved in this case has already been acquitted on the basis of the statement made by the co-accused. It is also contended that since the seizure was doubtful, the principal accused was favoured with an order of acquittal.

Mr. Banerjee proposes for quashing the proceeding pending against the petitioner, upon due exercise of principle of

parity under Section 482 of the Code of Criminal Procedure.

Mr. Mukherjee, learned Public Prosecutor representing the State submits that the court below has already fixed date for consideration of charge and the point now raised may be taken up at the time of making consideration of charge.

Having considered the rival submissions of the parties, the court is of the view that the instant revisional application may be disposed of, so as to subserve the purpose of justice, as proposed to be obtained giving a direction mentioned hereinbelow.

Learned court below is directed to consider the points now raises, as referred above, at the time of making consideration of charge and decide the same in accordance with law, providing sufficient opportunity of hearing to either of the parties to this case. It is clarified that the court has not considered the merits of the case, which is left open for appropriate decision in accordance with law by the learned court below.

This order is passed without prejudice to the rights and contentions of the petitioner in the matter.

(Subhasis Dasgupta, J.)