

Form No. J(2)

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION

Present:

The Hon'ble Justice Jay Sengupta

C.R.R. 1756 of 2020

Bandana Roy

-vs-

The State of West Bengal

For the Petitioners : Mr. Ranadeb Sengupta
Mr. Sachit Talukdar
.....Advocates

For the Opposite party : Mr. Avik Ghatak
Mr. Sagnik Mukherjee
.....Advocates

For the State : Mr. P.K. Datta
Mr. Santanu Deb Roy
.....Advocates

Heard on : 19.02.2021

Judgment on : 19.02.2021

Jay Sengupta, J.:

This is an application challenging an order dated 10.11.2020 passed by the learned Judicial Magistrate, 2nd Court, Asansol, Paschim Bardhaman in G.R. Case No. 396 of 1986 under Section 498A of the Indian Penal Code and under Sections 3 and 4 of the Dowry Prohibition Act, thereby fixing on 14.12.2020 as a date for argument as the prosecution did not take any step.

Learned counsel appearing on behalf of the petitioner submits as follows. By an order dated 19.03.2008 passed in CRR 394 of 2005, this Court directed the learned trial Court to examine CSW 5, the doctor who had treated the victim lady. Although this order was communicated to the learned trial Court, as would be reflected from the order dated 25.06.2008 and subsequently, from the order dated 12.01.2018, the learned trial Court did not take any step to examine the said witness. It is also true that the records of the case were lying before this Court and was sent back only in 2018. The accused was brought by issuing a warrant of arrest. However, the earlier order passed by this Court

was not complied with.

Learned counsel appearing on behalf of the opposite parties submits as follows. After the earlier revisional application was filed in 2005, the same was notified to the learned trial Court at a later stage. In the meantime, the learned trial Court had proceeded to examine the accused under Section 313 of the Code. If at all, a direction is passed to have CSW 5 examined, then the learned trial Court may be directed to continue the proceeding from the stage of examination of the accused.

Learned counsel appearing on behalf of the State submits that since there is an inordinate delay caused in disposing of the application, a specific direction may be passed to conclude the trial as expeditiously as possible.

I have heard the submissions of the learned counsels appearing on behalf of the petitioner, the State and the private opposite parties and have perused the revision petition.

The relevant direction passed by this Court on 19.03.2008 in CRR 394 of 2005 may be set out as under:

“ Having heard the Ld. Advocate for the petitioner, I find that though summon was issued upon the witness,

his presence could not be secured by the trial Court but the order impugned does not reveal that the Ld. Magistrate was satisfied as to the service of process upon the witness. If the process was not actually served upon the witness and if the evidence of such a witness was really necessary, then closure of the evidence cannot be done. In that view of the matter, I am unable to support the impugned order dated 03.01.2005. Accordingly, the revisional application is allowed. The order dated 03.01.2005 passed by the Ld. Judicial Magistrate, 2nd Court, Asansol is set aside. The Ld. Magistrate will proceed with the trial of the case in accordance with law in the light of the observation contained in the body of this order.”

However, it appears from the order sheet that although the learned trial Court came to know about the order of this Court in 2008 and again in 2018, yet it did not take adequate steps to have the said witness being CSW 5 examined. It also appears that in the meantime, the accused was examined under Section 313 of the Code.

In view of the above and in the interest of justice, the impugned order fixing the next date for argument is

set aside. The learned trial Court is directed to issue a process upon the witness being CSW-5 and have him examined as per the earlier direction passed by this Court. Thereafter, the learned trial Court shall continue the proceeding from the stage of examination of the accused under Section 313 of the Code in as much as, necessary questions may put to the accused concerning the evidence to be adduced by the new witness and thereafter, conclude the proceeding as expeditiously as possible, preferably within a period of six months from the next date of hearing.

With these observations, the revisional application is disposed of.

Urgent photostat certified copies of this order may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

(Jay Sengupta, J.)