

21.1.2021

ks.

Ct. 42, sl.41

CRR 1795 of 2020

Bablu Akunji

vs

State of West Bengal & Ors.

Mr.Prantick Ghosh

...For the petitioner.

Mr. S.G. Mukherjee, ld. PP.,

Mr. Arijit Ganguly

... For the State.

Affidavit-of-service furnished by the petitioner be kept on the record.

The impugned order dated 21st November, 2020 passed by the learned ACJM, Basirhat in MP Case N.354 of 2020 declining to send the petition of complaint under Section 156(3) Cr.P.C for making registration of a specific case in the concerned Police Station, and thereby treating the petition under Section 156(3) Cr.P.C., as a complaint, after the rejection of prayer under Section 156(3) Cr.P.C., is subject of challenge in this revisional application.

Mr. Ghosh, learned Advocate representing the petitioner submits that the learned Magistrate has mechanically exercised his authority, while rejecting the prayer u/s. 156(3) Cr.P.C. thereby treating the petition under Section 156(3) Cr.P.C., as a complaint. It is contended by the learned Advocate for the petitioner, adverting to the copy of petition under Section 156 (3) Cr.P.C. that the Police investigation is extremely needed to get the stolen articles recovered, which have been specifically mentioned in the petition of complaint. Further contention, as expressed by the learned Advocate for the petitioner, is that even

after treating the petition under Section 156(3) Cr.P.C. as a complaint, there has been no process issued against the accused persons upon making compliance of the provisions of the law, which has caused great prejudice to the petitioner/complainant.

Mr. Ganguly, learned Advocate representing the State submits supporting the order of the learned Magistrate that the impugned order being reasoned one, the same should remain undisturbed. It is further submitted by Mr. Ganguly that magisterial discretion having been duly exercised upon making rejection of a petition under Section 156(3) Cr.P.C. providing therefor sufficient reasons, and thereby treating the petition of complaint under Section 156(3) Cr.P.C. as a complaint, there appears to be no illegality committed by the learned Magistrate.

Having considered the submissions of both parties and the materials placed in the record, it appears that the prime thrust is against the treatment caused by the learned Magistrate to the petition of complaint under Section 156(3) Cr.P.C. upon making rejection of the same providing sufficient reasons therefor.

Apparently, no process has been issued against the accused persons/opposite parties making due adherence to the provisions of the law. Even after treating a petition under Section 156(3) Cr.P.C. as a complaint, enough opportunity is left upon to get recovered the stolen articles, if therebe at all, upon making adequate prayer before the learned Court below, subject to making out a prima facie case, suggestive of issuing process therefor under the provisions of the law, against the proposed

accused persons. Justice can be best sub-served by disposing of the instant revisional application, as proposed to be obtained, by giving following directions :

The learned Court below is directed to proceed with the complaint in terms of the impugned order dated 21.11.2020 providing sufficient scope to the petitioner/complainant so that the witnesses, that may be produced for examination under Section 200 Cr.P.C. in order to make out a prima facie case, suggestive of making issuance of the process against the accused persons under the provisions of the law. Such exercise needs to be performed by the learned Magistrate within three weeks from the date of communication of this order by fixing a suitable date for the purpose.

The petitioner is directed to make communication of this order to the learned Court below for information.

The petitioner is at liberty to make application under the provisions of law before the learned Magistrate for alleged recovery of the item, shown in the complaint.

With this directions and observations, the revisional application stands disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all formalities.

(Subhasis Dasgupta, J.)