

24.02. 2022
item No.72
n.b.
ct. no. 34

(via video conference)
CRR 245 of 2020

Musa Karim Molla
Vs.
The State of West Bengal & Ors.

Mr. Satyendar Agarwal,
Mr. P. Bag
.....for the Petitioner

Mr. Sourav Chatterjee
Ms. Sumitra Das
.....for the opposite party nos.2 to 4

Mr. Ranabir Roy Chowdhury
Mr. Mainak Gupta
.....for the State

Mr. Agarwal, learned advocate appearing for the petitioner is aggrieved by an order dated 06.12.2019 passed by the Learned Additional Judicial Magistrate, 2nd Court at Basirhat, North 24 Parganas.

Mr. Sourav Chatterjee, learned advocate appears on behalf of the opposite party nos.2 to 4.

Mr. Ranabir Roy Chowdhury, learned advocate appears on behalf of the State.

I have perused the order dated 06.12.2019 passed by the Learned Additional Judicial Magistrate, 2nd Court at Basirhat, North 24 Parganas and the foundation of the order is on the basis of the judgment of the Hon'ble Supreme Court in the case of *Amrutbhi Shambhubhai Patel Vs. Shambhubhai Kantibhai Patel & Ors.* reported in (2017) 4 SCC 177, the aforesaid judgment was

overruled in the case of *Vinubhai Haribhai Malaviya Vs. The State of Gujarat*, reported in (2019) 17 SCC 1.

In view of the present interpretation of law, learned Magistrate is directed to consider the application afresh under Section 173(8) of the Code of Criminal Procedure. Consequently, the order dated 06.12.2019 is hereby set aside. Learned Magistrate would address on the merits of the application under Section 173(8) of the Code of Criminal Procedure regarding the non-performance of the Investigating Authority, as alleged by the petitioner/complainant.

Needless to state that this Court has not gone into the merits of the case and the same is left to the Learned Magistrate to consider independently and arrive at his own decision without being influenced by any observation of this Court.

Accordingly, CRR 245 of 2020 is partly allowed.

All pending connected application, if any, are consequently disposed of.

Interim order, if any, is hereby vacated.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Tirthankar Ghosh, J.)