

26.08.2022
Item no.17
Ct. No.42
CHC

C.R.R. No.720 of 2022
IA NO: CRAN/2/2022

In Re: An application under Section 482 read with Section 401 of the Code of Criminal Procedure, 1973.

AND

In the matter of:-

Tarun Bhattacharyya
... petitioner

Mr. Pradyut Saha,
Mr. Arkadipta Sengupta
...for the petitioner

Mr. Narayan Prasad Agarwala,
Mr. Pratick Bose
...for the State

Defacto complainant of Durgapur Newtownship P. S. Case No.151 of 2021 corresponding to G. R. Case No.2108 of 2021 has filed the instant revision challenging the specific part of the order dated 16th February, 2022, passed by the learned Additional Chief Judicial Magistrate, at Durgapur, directing the petitioner/defacto complainant being the Headmaster of Durgapur M.A.M.C. Township Modern High School (H.S.) and the School Management of the said school not to suspend the accused/opposite party from his service and allow him to continue his service with full remuneration till completion of trial of G.R. Case No.2108 of 2021.

Having heard the learned advocate for the petitioner and the learned P.P.-in-Charge, this Court is of the opinion that the instant revision may be disposed of here and now on the basis of the materials on record.

Durgapur Newtownship P.S. Case No.151 of 2021 was registered on 20th December, 2021 against the opposite party no.2 under Section 461/379 of the I.P.C. alleging *inter alia*, that the opposite party no.2 being one of the security guards Durgapur M.A.M.C. Township Modern High School (H.S.) had in association with another security guard namely, Binoy Rana committed theft of sum of Rs.2,85,000/-.

The aforesaid case is under investigation. Police has not filed any charge-sheet in the instant case.

During investigation police seized some amount of money from the possession of opposite party no.2.

Subsequently, the opposite party no.2 was granted bail.

Surprisingly enough, by passing the impugned order dated 16th February, 2022, the learned Magistrate directed the Headmaster/petitioner herein, and the Management of the said school to reinstate the petitioner in his employment with full remuneration.

Learned Magistrate failed to consider that the concerned school is a private school. The employment of opposite party no.2 was made on the basis of a contract of service. Personal contract of service, it is needless to say cannot be specifically enforced when petitioner is FIR named accused and investigation is pending against him, it is not within the scope of consideration by

the learned Magistrate as to whether the opposite party no.2 would be reinstated or not. It is absolutely within the domain of management of a private institution to take final decision regarding employment of any person in the said institution.

Therefore, the learned Magistrate exceeded his jurisdiction while passing the order dated 16th February, 2022 and the said order is liable to be set aside.

Accordingly, the instant revisional application is allowed on contest.

The impugned order dated 16th February, 2022, passed by learned Additional Chief Judicial Magistrate, Durgapur in G.R. Case No.2108 of 2021 is set aside.

The instant revisional application and the application being C.R.A.N.2 of 2022 stand disposed of.

Urgent certified photostat copy of this order, if applied for, be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(Bibek Chaudhuri, J.)