

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

CRR 752 of 2022

Dilip Kishore Dutta

-Vs-

The State of West Bengal & Ors.

For the Petitioner: Mr. Santu Chakraborty, Adv.,
 Mr. Abu Siddique Mallik, Adv.

Heard on: 11 November, 2022.

Judgment on: 11 November, 2022.

BIBEK CHAUDHURI, J. : –

1. The defacto complainant of New Alipore P.S C/No.73 of 2011 corresponding to CGR 1705 of 2011, under Sections 120B/420/406/467/468/471 of the IPC has filed the instant revision challenging the legality, validity and propriety of the order dated 29th December, 2021 passed by the learned Chief Judicial Magistrate at Alipore.

2. For the purpose of adjudication of the instant revision, it is pertinent to mention that police submitted charge-sheet against the ten accused persons under Sections 420/120B of the IPC. Out of the said ten accused persons two accused persons died during the pendency of the case and the case against them was filed forever.

3. It is submitted by the learned Advocate for the petitioner that initially police submitted charge-sheet against nine accused persons leaving aside the principal accused. Subsequently, the defacto

complainant filed an application under Section 173(8) of the Code of Criminal Procedure praying for further investigation in respect of the offence and supplementary charge-sheet against the said accused has also been filed by the Investigating Officer.

4. That on 27th January, 2020 the learned Magistrate passed an order fixing 15th April, 2020 for appearance of all the accused persons/private opposite parties, in default, it was directed that warrant of arrest would be issued against them. Subsequently, on 5th October, 2021 the learned Magistrate reiterated the said order dated 27th January, 2020 directing the accused persons to comply fixing 29th December, 2021.

5. On 29th December, 2021 a petition was filed on behalf of the accused persons 1-5, 8 and 10/private opposite parties stating their absence. The learned Advocate for the defacto complainant prayed for issuance of warrant of arrest against the absentee accused persons in view of the order dated 27th January, 2020 and 5th October, 2021. The learned Magistrate in his impugned order noted that the absentee accused persons were being represented by their learned Advocate. Moreover, the said date was fixed for hearing of the defacto complainant's petition under Section 173(8) of the Cr.P.C. Therefore, the learned Chief Judicial Magistrate, South 24 Parganas found that it was not obligatory to issue warrant of arrest against the absentee accused persons as date was fixed for hearing of the application filed by the defacto complainant under Section 173(8) of the Cr.P.C.

6. Being aggrieved against the aforementioned order, the defacto complainant has filed the instant revision.

7. I have heard the learned Advocate for the petitioner. In spite of service of notice the opposite parties remain unrepresented.

8. Having heard the learned Advocate for the petitioner and on careful perusal of the entire materials on record it is ascertained that the accused persons have already been enlarged on bail. They have also received the copies of police report and other documents in compliance of Section 207 of the Cr.P.C. However, trial of the case has not been commenced as yet due to pendency of petitioner's application under Section 173(8) of the Cr.P.C.

9. Under such backdrop, the learned Magistrate refused to issue warrant of arrest against the absentee accused persons.

10. It is submitted by the learned Advocate for the petitioner referring to a decision of the Hon'ble Supreme Court in **XXX vs. State of Kerala & Ors (Criminal Appeal No(s).1444/2021, dated 22nd November, 2021)** that the court does not have the power to alter the judgment and order once passed, except to correct the clerical or arithmetical error. Section 362 of the Cr.P.C prohibits the Court from altering its judgment and order. Thus, it is contended by the learned Advocate for the petitioner that the impugned order dated 29th December, 2021 is in the nature of altering the order dated 27th January, 2020 passed by the same Court which the learned Magistrate cannot pass in view of the provision contained in Section 362 of the Cr.P.C.

11. I have already noted the gist of the impugned order. The opposite parties/accused persons who were absent on the 29th December, 2021 were represented by their learned Advocate. The learned Advocate for the accused persons filed a petition on behalf of the accused persons and represented them before the learned Magistrate. The impugned order suggests that the learned Magistrate was satisfied that the personal attendance of the accused before the court on 29th December, 2021 was not necessary and permitted the learned Advocate for the accused persons to represent them. The above satisfaction by the learned Magistrate is in the nature of the provision contained in Section 317 of the Cr.P.C.

12. Therefore, I do find any illegality or material irregularity in the order dated 29th December, 2021.

13. The instant criminal revision is accordingly dismissed on contest.

14. However, considering the fact that the application under Section 173(8) of the Cr.P.C filed by the petitioner is pending for a long time for disposal, the learned Chief Judicial Magistrate Alipore is directed to dispose of the said application positively within one month from the date of communication of this order.

15. Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Bibek Chaudhuri, J.)