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28.07.2022
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C.R.R. 614 of 2015

**Pinki Khan @ De
Vs.
The State of West Bengal & Ors.**

**In Re.: Applications under Section 482 of the
Code of Criminal Procedure, 1973.**

Mr. Amajit De

...for the petitioner

This revisional application under Section 482 of the Code of Criminal Procedure is listed today for hearing.

Mr. De, learned Advocate for the petitioner, appears before the Court and is found ready.

None appears for opposite party nos. 2 to 5.

Administrative Report received on 23.06.2022 indicates that notice was served upon opposite party nos. 2 to 5.

Opposite party Nos. 2 to 5 were accused persons in C.R. Case No. 174 of 2010 under Sections 498A/406/323/34 of the Indian Penal Code previously pending before Learned Judicial Magistrate, 2nd Court, Durgapur.

The revisional application is taken up for hearing and consideration.

It is submitted by learned Advocate for the petitioner/complainant that in C.R. Case No. 174 of 2010 learned Judicial Magistrate, 2nd Court at Durgapur, passed an order on 28.11.2013 whereby due to no steps taken on behalf of the complainant, the accused persons were discharged under Section 245(2) of the Code of Criminal Procedure and also discharged their from bail bonds.

Being aggrieved, the petitioner preferred a Criminal Motion, bearing Cr. Motion No. 7 of 2014 before learned Additional Sessions Judge at Durgapur under Sections 397/399 of the Code of Criminal Procedure, which was dismissed by an order dated 24.11.2014 and the order passed by learned Judicial Magistrate, 2nd Court, Durgapur in C.R. No. 174 of 2010 was affirmed.

Learned Advocate for the petitioner submits that the order passed by learned Judicial Magistrate is erroneous, same suffers from illegality and impropriety and is liable to be set aside.

According to learned Advocate for the petitioner, complainant had taken steps on earlier dates, but only due to her absence on a single occasion, the accused persons were discharged. It is stated that date was fixed for evidence before charge and on 18.01.2013 the complainant filed fresh Vocalatnama and opposite parties filed an application under Section 205 of the Code of Criminal procedure, which was fixed for hearing. On

29.04.2013 learned Magistrate issued a notice to the complainant/petitioner to show cause for not taking steps on 20.08.2013. On that date, petitioner filed reply to the notice, which was accepted by the learned Magistrate. Later on, petitioner learnt that the case was heard on 28.11.2013 in absence of the complainant/petitioner where the order of discharge was passed. It is contended that learned Magistrate failed to take into consideration the fact that due to her mistake on a single date, she would suffer to such an extent.

I have considered the submissions made by learned Advocate for the petitioner and also perused the impugned order and the provisions of law applying to the case. We cannot be unmindful of the fact that the complaint was filed by the petitioner on 25.03.2010 against four persons. The proceedings continued for more than four years but the complainant could not fulfill the statutory provisions under Section 245(3) of the Code of Criminal procedure, which lays down as under:

“(3). If the evidence referred to in section 244 are not produced in support of the prosecution within four years from the date of appearance of the accused, the Magistrate shall discharge the accused unless the prosecution satisfies the Magistrate that upon the evidence already produced and for special reasons there is ground for presuming that it shall not be in the interest of justice to discharge the accused.”

Though at present we are not concerned with the above provision under Section 245(3) (West Bengal State Amendment), we cannot be oblivious of the fact that the complainant was not diligent in proceeding before the Court and the matter remained pending. It would appear from the petition that the complainant habitually remained absent for which learned Magistrate by order dated 29.04.2013 took adequate care to issue notice to her to show cause as to why petitioner remained absent on 20.08.2013. Even thereafter, the complainant remained absent without steps. As a result, learned Magistrate had no other option but to discharge the accused persons in compliance with Section 245(2) of the Code of Criminal Procedure.

In the criminal motion filed by the petitioner learned Additional Sessions Judge, Durgapur has also pointed out that if the contention of the petitioner was considered that the case was adjourned to a next date on 12.02.2014, then the record would not have been put up on 28.11.2013.

I do not find any merit in the revisional application of the petitioner and there is no reason for keeping the case pending at the suffering of the proposed accused persons when the complainant herself is not ready to proceed with her case.

The revisional application is dismissed on its merit.

Interim order, if any, stands vacated.

Let a copy of this order be communicated to learned Additional Sessions Judge, Durgapur for information.

Urgent photostate certified copy of this order, if applied for, be made available to the parties upon compliance of all requisite formalities.

(Ananda Kumar Mukherjee, J.)