

22.03.2022

Item No.19
Ct.No.34
dc.

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION**

C.R.R. 931 of 2018

**Bidyut Biswas
versus
Smt. Moutusi Biswas & Anr.**

Mr. S. R. Das,
Mr. Sayantan Rakshit,
Mr. Dipankar Pramanik,
Mr. K. P. Mukhopadhyay ... For the Petitioner.

Affidavit-of-service filed in Court today be kept on record.

The subject matter of challenge relates to an order dated 07.12.2017 passed in C.R. Case No. 247/2017 by the learned Judicial Magistrate, 6th Court, Krishnagar, Nadia.

I have perused the order dated 07.12.2017 wherein the learned Magistrate has referred to the conduct of the complainant on 10.07.17, 04.08.17, 15.09.17, 27.10.17 and 23.11.2017. On each of these dates, which was fixed by the learned Magistrate for evidence before charge, either absent petition or adjournment petition was advanced on behalf of the complainant. The learned court finally by its order dated 23.11.2017 passed an order directing to file show cause to the complainant as to why the accused persons shall not be discharged. On an earlier occasion on 27.10.2017, a cost of Rs.200/- was also imposed for allowing an adjournment petition being filed on behalf of the complainant.

The impugned order dated 07.12.2017 reflects that the complainant filed his hajira and also hajira of two witnesses.

The ground assigned by the learned advocate for the complainant was that his case diary was misplaced on 23.11.2017 and as such, he could not take steps. Subsequently the learned advocate for the complainant also filed another petition praying for adjournment for adducing evidence. Learned court refused to accept the ground assigned by the learned advocate and categorically held that on an earlier occasion i.e. on 27.10.2017, the complainant also filed hajira of two witnesses and finally none turned up as witness and the matter had to be adjourned. The cause thus shown was held by the learned Magistrate to be grossly incorrect and the learned Magistrate refused to accept the same.

After observing as aforesaid, learned Magistrate proceeded to hold that as there was no material available, the accused should be discharged under Section 245(2) of the Code of Criminal Procedure.

Having regard to the provisions of the West Bengal Amendment wherein time has been granted by the legislature for four years from the date of appearance of the accused person, I am of the view that some more opportunity should have been granted to the complainant in view of the legislative intention. Having regard to the fact that the complaint case is of the year 2017 and the accused persons appeared on 13.06.2017, it was incumbent on the learned Magistrate to adhere to the statute for allowing the complainant to complete his evidence before framing of

charge. Accordingly, the order dated 07.12.2017 passed by the learned Judicial Magistrate, 6th Court, Krishnagar, Nadia is hereby set aside.

The complainant should be granted another three years time to produce his witnesses before the learned court comes to a finding either for discharging the accused persons under Section 245 of the Code of Criminal Procedure or for framing of the charge.

With the aforesaid observations, the revisional application being CRR 931 of 2018 is allowed.

Interim order, if any, is made absolute.

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

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

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

(Tirthankar Ghosh, J.)