

Form No.J(1)

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

Present:

The Hon'ble Justice Tirthankar Ghosh

C.R.A. (SB) 45 of 2022

***Surendra Kumar Sharma
versus
Gobinda Chattapadhyay & Anr.***

For the Appellant : Mr. Swapan Kumar Mallick,
Mr. Suman De.

For the Opposite Party No.1. : Mr. Amarta Ghose,
Ms. Rituparna De Ghose,
Mr. Siddhartha Paul.

Heard On : 26.07.2022 & 16.08.2022.

Judgement On : 16-08-2022.

Tirthankar Ghosh, J. :

Mr. Mallick, learned advocate appearing for the appellant submits that for no fault, the present appellant has been penalised and the same is because of assurance given by the opposite party no.1.

Mr. Ghose, learned advocate appearing for the opposite party no.1 draws the attention of the Court to the orders passed by the learned trial court.

I find that the trial of the case was progressing smoothly and the examination-in-chief of PW-1 was complete, but from the cross-examination stage of the complainant, the case was delayed and on 24.11.2016, there was an application filed on behalf of the accused/opposite party no.1 to settle the dispute. Records reflect that on 03.02.2017, the accused was absent; on 27.03.2017, an assurance was given by the learned lawyer appearing for the accused that the payment would be made by two months; on 02.06.2017, both the parties were absent; on and from 04.08.2017, the complainant was absent and as such, on 12.10.2017, show cause was issued; on 12.12.2018, no step was taken by the complainant and finally, on 18.12.2017, the case was dismissed for non-prosecution.

Mr. Ghose, learned advocate for the opposite party no.1 has relied upon a decision of the Hon'ble Supreme Court in **S. Rama Krishna Vs. S. Rami Reddy (D) by his Lrs. & Ors.** reported in **AIR 2008 SC 2066**. Paragraph 12 of the said judgement is set out as follows :

“12. The High Court itself had come to the finding that the respondents were not interested in getting the matter prosecuted. Despite the same, it allowed their appeal, opining that any lis

between the parties should be decided on merits rather than on technicalities. On what basis such a statement of law was made is not known. No precedent was cited; no reason has been assigned.

The High Court failed to take into consideration the fact that it was dealing with an order of acquittal and, thus, the principle of law which was required to be applied was that, if two views are possible, a judgment of acquittal should not ordinarily be interfered with.

There exists a distinction between a civil case and a criminal case. Speedy trial is a fundamental right of an accused. The orders passed by the competent court of law as also the provisions of Code of Criminal Procedure must be construed having regard to the Constitutional scheme and the legal principles in mind.”

The facts of the present case are completely different from the case relied upon by the learned advocate for the opposite party no.1, in view of the fact that in the case referred to, the original complainant expired and thereafter, the matter was pending and there was representation on behalf of the learned advocate that the heirs would be representing the complainant and on 14 dates, nobody represented the complainant. In this case, there was a representation that payment would be made. To that effect, an application was filed before the court. Again on subsequent dates assurance was given and time was sought for completing the payment. The factual circumstances being different in

both the cases, I do not think that the ratio laid down in the case of *S. Rama Krishna* (supra) applies to the present case.

I find that the complaint case was initiated in the year 2006. As observed above, the complainant was diligent till his examination-in-chief was over and prior to the assurance given by the accused/opposite party no.1 for completing the payment towards the dishonoured cheque. Records reflect that for about five occasions, the complainant was not present and as such, for a tenure of one and a half years when the learned court decided to dismiss the complaint case for non-prosecution. Having regard to the fact that there was persuasion in respect of the case for more than 10 years and for a brief period, the complainant could not make himself available, an opportunity must be given to the complainant to prove his case before the learned trial court. Accordingly, the order dated 18.12.2017 dismissing the complaint case No. C-6239 of 2006 for non-prosecution is hereby set aside.

The appeal being CRA (SB) 45 of 2022 is, thus, allowed.

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

The learned trial court is directed to issue notice to both the parties, fix a date and proceed with the trial from the stage of the cross-examination of the complainant.

Department is directed to communicate this order to the learned trial court immediately.

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

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

(Tirthankar Ghosh, J.)

dc.