

11.05. 2022
item No.4
n.b.
ct. no. 34

CRR 688 of 2015

Swarendu Mitra
Vs.
State of West Bengal & Ors.

Mr. Tapan Dutta Gupta,
Mr. Parvez Anam
.....for the Petitioner

Mr. Saswata Gopal Mukherjee, P.P.
Mr. Manisha Sharma
.....for the State.

Mr. Brajesh Jah,
.... For the opposite party.

The present revisional application has been preferred by the de facto complainant/petitioner challenging the order dated January 20, 2015 passed by the Learned Chief Judicial Magistrate, Barasat, North 24 Parganas in connection with Baguiati Police Station Case no. 501 of 2014 dated August 30, 2014 under Sections 380,506,406 of the Indian Penal Code.

Mr. Dutta Gupta, learned advocate appearing for the petitioner/de facto complainant submits that the Investigating Agency while submitting the charge sheet discharged five accused persons and submitted charge sheet only against one accused person. The learned Chief Judicial Magistrate, Barasat without issuing any notice upon the petitioner/ de facto complainant accepted the prayer for discharge made in the charge sheet by the

Investigating Officer without affording any opportunity to the petitioner.

Mr. Jha, learned advocate appears for the private opposite party.

Mr. Mukherjee, learned Public Prosecutor appears on behalf of the State.

On perusal of the order dated January 20, 2015, I am of the opinion that the said order suffers from legal infirmity in view of the fact that it was incumbent upon the learned Magistrate to issue notice upon the de facto complainant/petitioner prior to accepting the prayer of the Investigating Officer for discharging the five accused persons. However, having regard to the fact that such order was passed in the year 2015 and there has been no progress in the trial of the case since then it would not be prudent now to ask the learned Magistrate to reconsider the prayer advanced by the Investigating Officer, as more than 7 ½ years have passed in the mean time. The essence of a criminal trial incorporates within itself the spirit of Article 21 of the Constitution of India.

Accordingly, I direct that the learned Magistrate conducting the trial would consider after the examination of the petitioner/de facto complainant is over as a prosecution witness, as to whether the accused persons who have been discharged are required to be brought within the ambit of the trial by way of invoking the provisions of Section 319 of the Code of Criminal Procedure.

Having regard to the period of time which has lapsed in the mean time I am of the opinion that no interference is made in respect of order under challenge.

Accordingly, CRR 688 of 2015 is dispose of.

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

Interim order, if any, is hereby vacated.

In view of the fact more than seven years have passed, I direct the Learned Magistrate to consider framing of charges on the next date fixed for hearing or within a month thereafter and proceed with the trial of the case.

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

(Tirthankar Ghosh, J.)