

Form No.J(1)

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Tirthankar Ghosh

CRA 203 of 2019

Tarit Kumar Dey

-vs-

Nani Gopal & Anr.

For the appellant:	Mr. Satadru Lahiri
For the State:	Mr. Anwar Hossain Ms. Manisha Sharma
For the O.P. No.1:	Mr. Aniket Mitra Mr. Sk. Sahjahan Ali

Heard on: 4th August, 2022.

Judgment on: **4th August, 2022.**

Tirthankar Ghosh, J.

The present appeal has been preferred challenging the judgement and order of acquittal dated 10th January, 2019 passed by the learned Judicial Magistrate, 1st Court, Contai, Purba Medinipur in C. R. Case No. 110 of 2014 under Section 138 of the Negotiable Instruments Act.

Record of this case reflects that by an order dated 01.07.2014, the learned Additional Chief Judicial Magistrate, Contai,

Purba Medinipur was pleased to take cognizance of the offence and thereafter transferred the case to the learned Judicial Magistrate, 1st Court, Contai.

By an order dated 08.09.2011, the learned Judicial Magistrate, 1st court, Contai after considering the affidavit on oath filed on behalf of the complainant was pleased to issue process against the accused person holding that prima facie a case under Section 138 of the N. I. Act has been made out and fixed date on 07.11.2014.

Record reflects that on 10.12.2014, the accused appeared before the learned Magistrate and was granted bail and on 10.04.2015, the substance of the accusation was read out to the accused person under Section 251 of the Code of Criminal Procedure to which he pleaded not guilty and claim to be tried.

Record also reflects that the accused was subsequently not co-operating with the progress of the trial of the case and the learned court was pleased to issue warrant of arrest and as such, the trial could not proceed till May, 2017. For another one year, the accused started evading the court and as such the trial could not commence till May, 2018.

Record reflects that on 30th May, 2018, the complainant examined himself as P.W.1 and five documents have been marked as exhibits. The evidence of the complainant continued on 06.09.2018

and finally on 20th December, 2018, when the evidence of P.W.1 was continuing a petition was filed at the instance of the accused. The learned Magistrate by an order dated 10th January, 2019, surprisingly ordered that the complaint case is not maintainable and is liable to be dismissed and acquitted the accused from the case discharging him from the bail bonds.

Without entering into the merits of the case, I am of the opinion that once in summons procedure case, the learned Magistrate has completed the stage of Section 251 of the Code of Criminal Procedure and enters for adhering to the provisions of Section 254 of the Code of Criminal Procedure, there is no scope for the learned Magistrate to come to a finding summarily on a petition without concluding the evidence holding either the accused guilty or not guilty of the offence.

At this stage, it is incumbent upon the learned Magistrate to complete the procedures enacted under the Code of Criminal Procedure and come to a final conclusion after assessment of the evidence of the case granting opportunity to both the prosecution and the defence.

The very entertainment of such application termed as maintainability have been deprecated by the Hon'ble Supreme Court in the cases of ***Adalat Prasad -vs- Rooplal Jindal & Ors.*** reported in

2004 7 SCC 338 and **Subramaniam Sethuraman vs State of Maharashtra & Anr** reported in *2004 13 SCC 324*.

Having regard to the settled proposition of law as also the manner in which in the midst of evidence, the learned court has assessed the evidence of the case on a petition filed by the accused is against the basic structure of the Code of Criminal Procedure and as such, the order dated 10th January, 2019 is liable to be set aside.

Needless to state that this court has not gone into the merits of the case so far as the points which were considered by the learned Magistrate regarding statutory compliance under Section 138 and Section 142 the N. I. Act. The same is subject matter of consideration at the time of final argument of the case after examination under Section 313 of the Code of Criminal Procedure and examination of defence witnesses.

Thus, the appeal being CRA 209 of 2019 is allowed. The learned Magistrate would issue fresh notice upon the accused preferably within a period of one month from the date of the communication of this order, complete the process of trial within a period of one year from the date of appearance of the accused and arrive at its findings.

Department is directed to send back the lower court records and communicate this order to the learned trial court within a period of seven days from date.

All concerned parties shall act in terms of the copy of the order downloaded from the official website of this Court.

[Tirthankar Ghosh, J]

Subha.