

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

CRR 1402 of 2022

M/s. Krishna Apartments Private Limited

-Vs-

The State of West Bengal & Ors.

For the Petitioner: Mr. Sekhar Kumar Basu, Sr. Adv.,
 Mr. Saptarshi Dutta, Adv.

Heard on: 14 November, 2022.

Judgment on: 14 November, 2022.

BIBEK CHAUDHURI, J. : –

1. Having heard Mr. Sekhar Kumar Basu, Learned Senior Advocate on behalf of the petitioner, this Court passes the following order in continuation of order dated 1st September, 2022.

2. By filing the instant revision, the petitioner has prayed for a direction upon the trial court for reconstruction of lower court record in connection with case No.C/25499 of 2013. On 1st September, 2022 when the matter was initially heard, the court refrained from passing final order and Mr. Basu was requested to address this Court as to whether in view of the specific provision of reconstruction of record contained in the Criminal Rules and Order, this Court can pass an order allowing the prayer of the petitioner under Section 482 of the Cr.P.C.

3. Mr. Basu, the learned Senior Counsel refers to a decision of the Hon'ble Supreme Court in **State of U.P. vs. Abhai Raj Singh & Anr : AIR**

2004 SC 3235 and submits that an order of acquittal passed by the Allahabad High Court on the ground that the lower court record was not traceable was set aside by the Hon'ble Supreme Court and the appeal was remitted back to the High Court directing reconstruction of record. On the same issue Mr. Basu refers to an unreported decision of the Hon'ble Supreme Court in the case of **Kunwar Bahadur Singh vs. Sheo Baran Singh & Ors.** dated 29th November, 2000.

4. Chapter XXI of the Calcutta High Court Criminal (Subordinate Courts) Rules 1985 deals with "Reconstruction of Records and Registers Destroyed or Damaged by Fire". However, the same formalities are to be followed when a record is destroyed otherwise, such as flood or riot, or when the record is lost and remains untraceable.

5. Most important element of these rules is that if a part of a particular record is lost or destroyed, the Presiding Officer of the concern Court should at once take personal charge of the rest of the record which is still available. Then, he should at once report to the High Court through the Registrar General. Thereafter the reconstruction process should start. Minutes of the steps for reconstruction should also be preserved.

6. With regard to reconstruction of records, Rule 365-367 are absolutely important and quoted below:-

"R. 365. (a) If the records of any case whether pending or disposed of are destroyed, the Presiding Officer shall take such steps as may be necessary to reconstruct the papers destroyed and for this purpose he may send notice to the lawyers concerned or to any other authority dealing with any

matter in connection with the case under orders of the court or authority of law.

(b) If any list of documents or any exhibit has been destroyed, the same shall be reconstructed by demanding duplicate copies of the same from the persons who originally filed them in court.

R. 366. (a) Particulars gathered shall be carefully scrutinized by the Presiding Officer and after being satisfied about their genuineness he shall sign a certificate on each page of the documents reconstructed that the same has been reconstructed under his supervision.

(b) If any register relating to the pending case is available the lawyers concerned shall be allowed to consult the entries of the same and to take notes of them free of charge.

R. 367. (1) Affidavits which are found to have been destroyed along with the records may be reconstructed by obtaining copies thereof from the party originally swearing the same with notice to the other party failing which the party concerned shall be asked to swear fresh affidavits.

(2) In case any affidavit is required to be re-sworn by any party under sub-rule (1), this may be done without payment of any fresh court fee, if so ordered by the Presiding Officer.”

7. It is ascertained from the submission made on behalf of the petitioner that case No.C/25499 of 2013 is a complaint under Section 200 of the Cr.P.C alleging an offence under Section 138/141 of the Negotiable Instruments Act. The complainant/petitioner has stated on solemn affirmation that the copies of the written complaint and certified copies of the orders passed by the learned Magistrate in the aforesaid case are in his custody and he is able to produce the said documents for reconstruction.

8. Under such circumstances, the instant revision is disposed of directing the learned Metropolitan Magistrate 20th Court, Calcutta to take immediate step for reconstruction of the record of C/25499 of 2013 serving notice to both the complainant and the accused.

9. The complainant is at liberty to act on the server copy of the order.

10. This order be treated as part of the order dated 1st September, 2022.

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

(Bibek Chaudhuri, J.)