

04 14.03.2022
AGM
Ct. No. 35

CRR 1367 of 2011

In the matter of:- Pradip Kumar Sharma

...petitioner

Ms. Sima Ghosh,
...for the petitioner.
Mr. Saikat Chatterjee,
Mr. Abdur Rakib,
... For the OP No. 1.

Learned advocate for the petitioner and Opposite Party No. 1 are present. None appears for the State.

The matter is listed today for hearing.

Petitioner filed a petition under section 397 and 401 of the Code of Criminal Procedure read with Section 482 of the Code of Criminal Procedure assailing order dated 10.03.2011 passed by learned District & Sessions Judge, Birbhum in Criminal Revision No. 5 of 2011 under Section 397/399 of the Code of Criminal Procedure filed in connection with Complaint Case No. 1015 of 2008 under Section 138 of the Negotiable Instruments Act now pending before learned Chief Judicial Magistrate, Suri, Birbhum.

It is the contention of the petitioner that on 22.12.2010, the petitioner had prayed for an adjournment before the Court of learned Chief Judicial Magistrate on the ground of absence of his advocate but the petition was rejected by the learned Magistrate for which he has suffered irreparable loss. The petitioner thereafter preferred a revision before the Court of learned Sessions Judge, Suri but his revision was dismissed on 10.03.2011 on the ground that the petitioner and his advocate were not found present on repeated calls.

Instant application has been filed by the petitioner contending, inter alia, that the order passed by learned Chief Judicial Magistrate and

then by the learned Sessions Judge are bad in law and liable to be set aside. It is contented that learned Chief Judicial Magistrate ought to have considered that petitioner's advocate was absent. The application was filed by the petitioner but the Court dismissed the application casually without giving opportunity to the petitioner.

Learned advocate for the opposite party strongly opposed the prayer for setting aside the impugned order and drew my attention to the two consecutive orders passed by learned Chief Judicial Magistrate as well as by the learned Sessions Judge, wherein both the petitioner and his advocate were found absent on call.

It is submitted that such complaint case is harrasive in nature and the petitioner is not entitled to get any further opportunity.

Heard learned advocates for the parties. Perused the application for revision of the impugned order passed by learned Sessions Judge and order dated 22.12.2010 passed by learned Chief Judicial Magistrate. It appears from the order passed by learned Chief Judicial Magistrate, Suri that the opposite party No. 2 who is the accused person in this case was already examined under Section 251 of the Code of Criminal Procedure on 15.09.2009 but the petitioner was unable to examine any witness thereafter. On that date neither petitioner nor his advocate appeared before this Court for which the application was rejected. Learned Sessions Judge while passing the impugned order has also noted that neither the petitioner nor his advocate was found present for which the matter was fixed after recess. At a later stage, the petitioner was not found present on repeated calls and the application was dismissed.

This indicates that opportunity was provided to the petitioner but he committed the same mistakes by remaining away from the Court. The machinery of Court cannot be used for the purpose of harassing any

person.

The petitioner should have been alert and diligent on the next occasion when his matter was pending before the learned Sessions Judge and a proper submission should have been made to reason out why he was unable to be represented before the Court of learned Chief Judicial Magistrate on the earlier occasion. The petitioner was contented only with the fact that he has preferred a revisional application. This approach of the petitioner is a sheer abuse of the Court's process and the same cannot be permitted. Consecutive orders reflect negligence on the part of the petitioner. On a perusal of the order dated 22.12.2010 passed by learned Chief Judicial Magistrate, Suri, Birbhum, it appears that on dismissal of the complaint he has passed an order of acquittal of the accused and discharge from his bail bond. In summons cases a Magistrate under section 256 of the Cr. P.C is empowered to dismiss a petition of complaint and acquit the accused if on the date appointed for the appearance or any date subsequent, thereto to which the hearing may be adjourned, the complainant does not appear. In the present case not only did the advocate for the complainant remain absent, the complainant also was found absent. Therefore, learned Magistrate committed no error by dismissing the complaint and acquitting the accused.

When the matter came up before learned Sessions Judge on a revision, learned Sessions Judge also noted that the petitioner/complainant and his advocate were not found available. Opportunity was provided and the matter was taken up after recess but none was found available to represent the case of the petitioner. If for argument sake it is assumed that the legality of the impugned order had to be considered by the learned Sessions Judge, I hold that there was no illegality or irregularity in the order passed by the Magistrate and the

impugned order. Therefore, I find no merit in this application for revision and the same is dismissed on contest.

Let a copy of this order be sent to the Court of learned Sessions Judge, Suri, Birbhum for information. Interim order stands vacated.

(Ananda Kumar Mukherjee, J.)