

D/L 13
January 21,
2022
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C.R.R. No.1175 of 2019
(Via Video Conference)

In Re: An application under Section 401 read with Section 482 of the
Code of Criminal Procedure, 1973;

Arindam Kundu
Versus
The State of West Bengal & Ors.

Mr. Jagannath Ganguly.
...for the petitioner.

Mr. Arijit Ganguly,
Ms. Sujata Das.
...for the State.

Affidavit-of-service filed by the petitioner be kept with the
record.

Mr. Jagannath Ganguly, learned advocate appearing for
the petitioner/defacto complainant draws the attention of this Court
to the order dated 25.03.2019 passed by the learned ACJM,
Sealdah.

Records of this revisional application reflect that the
naraji petition, which was filed at the instance of the defacto
complainant, could not be considered and the same was rejected as
none appeared on the said date. No order was passed on the merits
of the application, which was preferred by the defacto complainant.
Primarily, the order also is self-contradictory because the
consecutive paragraphs in the order reflect that in the first

paragraph it says that the defacto complainant appeared and the next paragraph it says that the defacto complainant is absent.

Having regard to the nature of the order and the right which has accrued to the defacto complainant pursuant to the judgment of the Hon'ble Supreme Court, I am of the view that at least some opportunity must be given to the defacto complainant to have an audience for ventilating his/her grievance once the report is submitted under Section 173(8) of the Code of Criminal Procedure before the jurisdictional court.

It has been submitted that the case has been transferred to the learned Judicial Magistrate, 5th Court, Sealdah.

In view of the grievance of the defacto complainant, learned transferee Magistrate will consider the application under Section 173(8) of the Code of Criminal Procedure, which was earlier filed before the learned ACJM, Sealdah. Such application must be disposed of within sixty days from the date of communication of this order.

Needless to state that this Court has not entered into the merits of the case or the merits of the application under Section 173(8) of the Code of Criminal Procedure and the learned Judicial Magistrate, 5th Court, Sealdah shall independently decide the same on the foundation that whether any further investigation is required or not.

With the aforesaid observations, CRR 1175 of 2019 is disposed of.

Pending application, if any, is consequently disposed of.

Interim order, if any, is hereby vacated.

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

(Tirthankar Ghosh, J.)