

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE JUSTICE TIRTHANKAR GHOSH

CRR 1682 of 2017

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IA No. CRAN 1 of 2017 (Old No. CRAN 3103 of 2017)

Kartick Kumar Chatterjee & Ors.

-Vs.-

The State of West Bengal & Anr.

With

CRR 2763 of 2017

+

IA No. CRAN 1 of 2020

D & I Taxcon Services Pvt. Ltd.

-Vs.-

State of West Bengal & Ors.

With

CRR 3509 of 2019

+

IA No. CRAN 1 of 2020

+

IA No. CRAN 2 of 2021

D & I Taxcon Services Pvt. Ltd.

-Vs.-

State of West Bengal & Ors.

Mr. Ayan Bhattacharyya,
Mr. Aditya Ratan Tiwary,
Mr. Aditya Gooptu

....For the petitioners in CRR 1682 of 2017 and Opposite Party Nos. 2 to 5 in CRR 2763 of 2017 & CRR 3509 of 2019

Mr. Tapas Dutta,
Mr. Mritunjoy Halder

.... for the Petitioner in CRR 2763 of 2017 & CRR 3509 of 2019 and Opposite Party No.2 in CRR 1682 of 2017.

Heard on :

21.03.2022, 21.04.2022, 02.05.2022,
04.05.2022 & 18.05.2022

Judgment on : 10.06.2022

Tirthankar Ghosh, J:-

CRR 1682 of 2017

The stage at which the petitioner approached this Court for quashing of the proceedings is presently infructuous, as specifically by an order dated 08.11.2019 the learned Metropolitan Magistrate, 3rd Court, Calcutta was pleased to discharge the accused persons under Section 245 (1) of the Code of Criminal Procedure.

Accordingly, CRR 1682 of 2017 is dismissed as infructuous.

Pending applications, if any, is consequently disposed of.

CRR 2763 of 2017

The revisional application has been preferred for expeditious disposal of the case. In view of the complaint case no. C-24095 of 2012 being dismissed

and the accused persons being discharged, the revisional application being CRR 2763 of 2017 has become infructuous, consequently the same is dismissed as infructuous.

Pending applications, if any, is consequently disposed of.

CRR 3509 of 2019

The present revisional application was preferred challenging the order dated 08.11.2019 wherein the Learned Metropolitan Magistrate, 3rd Court, Calcutta was pleased to discharge the accused persons namely, Kartick Kumar Chatterjee, G. Gangopadhyay, Atish Bose and Amitava Goldar under Sections 245(1) of the Code of Criminal Procedure in connection with case no. C-24095 of 2012.

The background of the case is that initially an FIR was registered being Hare Street police station case no. 325 dated 03.06.09 under Section 447/427 of the Indian Penal Code on the basis of an application under Section 156(3) of the Code of Criminal Procedure filed by the present petitioner.

On completion of investigation the police authorities opined that the responsibility in respect of the offence alleged could not be fixed up against any person and closed the investigation of the said case. On 24.04.2012 the present petitioner being aggrieved preferred an application under Section 173(8) of the Code of Criminal Procedure before the learned Chief Metropolitan

Magistrate and the learned Chief Metropolitan Magistrate by an order dated 18.10.2012 was pleased to accept the final report submitted by the Investigating Officer of the case, however, by the same order the learned Magistrate was pleased to take cognizance under Section 190 Cr.P.C. of the offences as made out in the petition under Section 427/436/440/447/448/500/506 of the Indian Penal Code and transmitted the records of the case to the learned Metropolitan Magistrate, 3rd Court, Calcutta for enquiry into the complaint and further proceedings. The learned Metropolitan Magistrate, 3rd Court, Calcutta after examination of the complainant by an order dated 11.07.2016 was pleased to opine that a prima facie case under Sections 427/447/448/500/506 of the Indian Penal Code was made out and subsequently issued process for appearance of the accused persons. Needless to state that on receipt of the summons the accused persons appeared and were released on PR bond.

Thereafter, the accused/opposite parties challenged the proceedings of complaint case no. C-24095 of 2012 and initially the proceedings before the learned Metropolitan Magistrate, 3rd Court, Calcutta was stayed. As a result of such interim order being granted, dates were fixed by Learned Metropolitan Magistrate however, the proceeding before the learned Trial Court was settled.

The records of the Learned Magistrate's Court reflect that by an order dated 18.05.2018 the Learned Magistrate was initially pleased to fix 23.08.2018 for plea (i.e. examination of the accused persons under Section 251

of the Code of Criminal Procedure), however, on 23.08.2018 the learned Magistrate was of the opinion that the case should be fixed for consideration of charge and accordingly fixed 27.11.2018. Complainant was present, however, the case was adjourned on the adjournment prayer of the accused persons and the learned Magistrate fixed 14.01.2019 for consideration of charge, on the said date because of the resolution of the local Bar there was no progress and the next date was fixed on 08.03.2019, on 08.03.2019 the complainant was present, however, the Presiding Officer was on leave and as such the next date fixed was on 24.04.2019 for consideration of charge, same order was passed on 24.04.2019 and the next date was fixed on 24.06.2019. On 24.06.2019 the learned Metropolitan Magistrate found that the complainant was absent on calls and directed to file show-cause, fixing 28.08.2019 as the next date. On 28.08.2019 the complainant was not present and as such the learned Magistrate closed the evidence before charge and fixed date for consideration of charge. On 26.09.2019 date was fixed on 08.11.2019 and on 08.11.2019 learned Magistrate was of the opinion that as the complainant has not adduced any evidence, therefore, there is lack of evidence and as such no sufficient materials are there for framing of charge, so the accused should be discharged under Section 245(1) of the Code of Criminal Procedure.

Mr. Dutta, learned Advocate, appearing for the petitioner submitted that for a considerable period of time the learned Magistrate recorded that the dates were fixed for hearing on the point of consideration of charge and suddenly on 28.08.2019 date was fixed for evidence before charge. According to the learned

Advocate the order of discharge passed on 08.11.2019 is illegal as without assigning any reasons the learned Magistrate has discharged the accused persons. Learned Advocate to that effect has relied upon Ratilal Bhanji Mithani –Vs. – State of Maharashtra, (1979) 2 SCC 179; Sherish Hardenia & Ors. –Vs. – State of M.P., (2014) 14 SCC 406 and additionally an unreported judgment being order dated 10.01.2022 in CRR 188 of 2020 (Supratik Ghosh –Vs. – State of West Bengal & Ors.) which has also been relied upon by the learned Advocate.

Mr. Ayan Bhattacharya, learned advocate appearing for the petitioners has stressed on the issue that the nature of the order so passed by the learned Magistrate is under Section 256 of the Code of Criminal Procedure which impliedly is an order of acquittal and an appeal is required to be filed instead of a revisional application which has been preferred by the present petitioner. The learned advocate has stressed on this issue and submitted that as the complaint case is the genesis of the revisional application, therefore Special Leave to appeal is to be preferred and under no circumstances this Court is empowered to convert revisional application to an appeal as prior to admission of appeal, Special Leave is to be granted which requires judicial application of mind. Learned advocate relied upon the following decisions:

Municipal Corporation of Greater Mumbai –Vs. – Pankaj Arora (Secretary) & Ors., (2018)3 SCC 699; M. Ramamurthy –Vs. – N. A. Ramakrishnan, 2014 SCC OnLine Mad 6790; Bikash Bhuiya –Vs. – Nepal Chandra Das & Anr.,

(2021) Gauhati Law Reports 721; R.P.G. Transmission Ltd. –Vs. – Sukura Seimitsu (I) Ltd. & Ors., 2005 CRI. L.J. 2862; Benny Daniel –Vs. – M/s Gold Galaxy, 2017 SCC OnLine Ker 10914; Synco Industries Ltd. –Vs. – Assessing Officer, Income Tax, Mumbai & Anr., (2008) 4 SCC 22 and Md. Kasimuddin – Vs. – Yunus Ali Mondal & Ors., 1983 CRI. L.J. 885 (Cal).

I have considered the submission advanced by both the parties and also scrutinized the Lower Court Records. On consideration of the Lower Court Records, I am of the view that the learned Magistrate in seisin of the matter was not procedural confident regarding the manner in which the case is to be progressed. Firstly, on 18.05.2018 the learned Magistrate fixed date for plea (examination under Section 251 of the Code of Criminal Procedure) then on 23.08.2018 the learned Magistrate fixed date for hearing on the point of consideration of charge and the same nature of order continued till 24.04.2019. Suddenly, on 24.06.2019 the learned Magistrate recorded why the case should not be dismissed for non-prosecution and on 28.08.2019 closed the evidence before charge, fixing 26.09.2019 for consideration of charge. It would not be out of place to state that from 18.05.2018 the complainant was present on number of occasions and the case was dragged over the issue of consideration of charge, although under the procedural law in a warrant procedure case initiated otherwise that on police report the learned Magistrate was bound to record in the order that date is to be fixed for evidence before charge. The subsequent order of the learned Magistrate closing the evidence before charge has seriously prejudiced the complainant in the instant case as

the complainant was not made aware that he has to adduce evidence prior to the charge being considered as the dates were fixed for “consideration of charge”. Another important aspect in this case is that there were allegations which included offences punishable under Section 506 of the Indian Penal Code which under the said provision would include “to cause the destruction of any property by fire” the offence so prescribed under the said provision would thus follow the provisions of ‘warrant procedure case’ as prescribed under the Code. Thus, the contention advanced by the learned advocate appearing for the private opposite party that the provisions of Section 256 of the Code of Criminal Procedure are to be adopted is not tenable in the eye of law which is applicable only to summons procedure case.

On a scrutiny of the Lower Court Records, I find that the act and actions of the learned Court while conducting the Judicial Proceedings so far as the applicability of the Code of Criminal Procedure is concerned was against the settled proposition of law which has seriously prejudiced the complainant of the case and as such the order dated 08.11.2019 passed by the learned Metropolitan Magistrate, 3rd Court, Calcutta in C-24095 of 2012 is liable to be set aside.

Consequently the revisional application being CRR 3509 of 2019 is allowed.

Department is directed to send back the Lower Court Records and the learned trial Court is directed to fix date for evidence before charge after informing both the parties.

Pending application, if any, is consequently disposed of.

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

Urgent Xerox certified photocopy of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Tirthankar Ghosh, J.)