

Form No.J(1)

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

Present:

The Hon'ble Justice Tirthankar Ghosh

C.R.A. (SB) 100 of 2022

**Dr. Madhu Jyostna Marjara
versus
The State of West Bengal and another**

For the Appellant : Mr. Manik Lal Poddar.

For the State : Ms. Anasuya Sinha,
Ms. Jonaki Sha.

Heard On : 22.08.2022.

Judgement On : 22.08.2022.

Tirthankar Ghosh, J. :

The present appeal has been preferred against the judgment and order dated 18th May, 2022 passed by the learned Metropolitan Magistrate, 17th Court, Calcutta in Case No.CS-55539 of 2016 under Section 138 of the Negotiable Instruments Act.

Mr. Manik Lal Poddar, learned advocate appearing for the appellant drew the attention of this Court to the order dated 18.05.2022

wherein the learned Magistrate was pleased to acquit the accused person under Section 256(1) of the Code of Criminal Procedure.

Pursuant to the order dated 08.08.2022, the Inspector-in-Charge, Kharagpur Town Police Station submitted a report wherein it has been contended that the police authorities had been at the address provided in the cause title. However, it was informed to them that the respondent no.2 has left the house long back. The police authorities tried to serve upon the father of respondent no.2, that is, Avijit Bagchi, but he refused to receive the same, as the whereabouts of the respondent no.2 was not known to him.

In view of the aforesaid, this Court decided to proceed with the appeal.

Let the report be kept with the record.

The order dated 18.05.2022 reflects that the accused at the relevant date was represented through his advocate under Section 317 of the Code of Criminal Procedure and the stage of the case was fixed for evidence after the examination under Section 251 of the Code of Criminal Procedure was completed by the learned Magistrate on an earlier date. The said order also reflects that on 07.01.2021 the complainant was directed to show cause as to why the complaint case should not be dismissed for non-prosecution. A reply of the show cause

was filed on 07.01.2021. The learned Magistrate has recorded that on perusal of the record it reflected that the show cause was also not accepted by the court. The complainant was also absent on 18.05.2022 and having regard to her conduct, the court was of the opinion that the complainant has lost interest in pursuing the litigation and, as such, dismissed the complaint case for non-prosecution and acquitted the accused under Section 256(1) of the Code of Criminal Procedure.

Mr. Manik Lal Poddar, learned advocate appearing for the appellant submits that the appellant was interested in pursuing the litigation, however, for reasons beyond her control, there was miscommunication with the learned advocate and, as such, she could not take effective steps before the trial court. It has also been brought to the notice of the court that the appellant has suffered a loss of Rs.7,50,000/- which has financially caused hardship to the appellant and she intends to pursue the litigation which she was unable for reasons stated above and at least the appellant must be granted an opportunity to prove her case on merits.

Having regard to the submissions advanced by the learned advocate for the appellant and the fact that for a substantial period of time the courts were operating in a staggered manner in the years 2020 and 2021, there was every possibility of miscommunication between an

advocate and the litigant. Having regard to the same, I am of the opinion that an opportunity must be granted to the appellant to prove her case on merits.

Accordingly, the order dated 18.05.2022 dismissing the complaint case being CS Case No.55539 of 2016 for non-appearance of the complainant/appellant under Section 256(1) of the Code of Criminal Procedure is hereby set aside.

Consequently, CRA (SB) 100 of 2022 is allowed.

The complainant is directed to be present before the learned Metropolitan Magistrate, 17th Court, Calcutta on 14th September, 2022. Learned Magistrate would issue notice upon the accused to appear and thereafter proceed with harsher process of law for compelling the appearance of the accused and progress with the case for taking it to its logical conclusion within a reasonable period of time. Needless to state that the complainant undertakes to appear on each and every date before the learned Magistrate without any fail except circumstances beyond her control.

Pending application, if any, is consequently disposed of.

Urgent photostat certified copy of this judgment, if applied for, be given to the parties upon compliance of all requisite formalities.

(Tirthankar Ghosh, J.)

