

17.05.2022

Item No.17
Ct.No.34
dc.

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

**C.R.R. 1846 of 2019
with
CRAN 1 of 2019 (Old No. CRAN 2734 of 2019)**

**Monika Mullick
versus
The State of West Bengal & Ors.**

In Re: An Application under Sections 401/482 read with Section 397 of the Code of Criminal Procedure filed in connection with Phoolbagan Police Station Case No. 76 of 2015 dated 07.04.2015 under Sections 420/120B/323/506/114 of the Indian Penal Code.

Mr. Ayan Bhattacharjee,
Mr. Antarikhya Basu,
Mr. Anirban Dutta,
Ms. Madhumita Basak,
Ms. Ritu Das ... For the Petitioner.

Md. Anwar Hossain,
Ms. Sreyashee Biswas ... For the State.

Mr. Sourav Chatterjee,
Mr. Aniruddha Bhattacharya,
Ms. Namrata Chatterjee
... For the Opposite Party Nos. 2, 3, 4 and 7.

Re: CRAN 1 of 2019 (Old No. CRAN 2734 of 2019)
(an application under Section 5 of the Limitation Act)

As the main revisional application relates to the doors of the present petitioner being closed before a criminal court, I find that the reasons so assigned in the application for condonation of delay are found to be just and sufficient in spite of the objection raised by Mr. Chatterjee, learned advocate appearing on behalf of the private opposite party Nos. 2, 3, 4 and 7. Accordingly, delay is condoned. The

application being CRAN 1 of 2019 (Old No. CRAN 2734 of 2019) is, thus, allowed.

Re: CRR 1846 of 2019

The order dated 16.11.2017 passed by learned Additional Chief Judicial Magistrate, Sealdah reflects that the learned Magistrate was pleased to accept the final report by making an observation that if there is breach of contractual obligation, no offence under Sections 420 or 406 of the Indian Penal Code is made out and there is hardly any allegation under Sections 323 or 506 of the Indian Penal Code.

Mr. Bhattacharjee, learned advocate appearing for the petitioner prays for copies of documents relied upon by the prosecution to come to its finding regarding the closure of investigation. Learned advocate submits that there was an application for further investigation.

Mr. Chatterjee, learned advocate appearing for the private opposite party Nos. 2, 3, 4 and 7 vehemently opposes the contentions advanced by Mr. Bhattacharjee, learned advocate for the petitioner and draws the attention of this Court to the prayers advanced before the learned court. It has been contended that there was a prayer before the learned Magistrate to invoke the provisions of Section 190(1)(b) of the Code of Criminal Procedure and there has been improvement in the prayer advanced before this Court.

Mr. Hossain, learned advocate appearing for the State submits Memo of Evidence which was prepared by the

investigating officer of the case. Let the same be kept on record.

I have considered the submissions advanced by the respective parties. I have also considered the allegations. I do not find that the opinion expressed by the learned Magistrate to be unjustified. However, the learned advocate for the petitioner submits that the foundation and fulcrum of the quantum which has been relied upon by the investigating officer is disputed and the complainant is in possession/custody of document by way of which she is in a position to prove the case.

In view of such submission made by the learned advocate for the petitioner, I am of the opinion that the petitioner should be afforded an opportunity to establish her case for issuance of process as there was an alternate prayer before the learned Magistrate under Section 190(1)(b) of the Code of Criminal Procedure.

In view of the aforesaid, if an application under Section 200 of the Code of Criminal Procedure is preferred before the learned Magistrate, the learned Magistrate would consider the same in the background of the additional facts placed before the court subsequent to the closure report filed by the investigating agency and accepted by the court. The documents relied upon by the prosecution to arrive at its finding under Section 173 of the Code of Criminal Procedure be handed over to the petitioner pursuant to the application under Section 200 of the Code of Criminal Procedure being filed before the jurisdictional court.

Learned Magistrate would check the documents relied upon by the police authorities as well as the fresh materials brought on record by the petitioner and thereafter consider whether to proceed under Section 204 of the Code of Criminal Procedure or under Section 203 of the Code of Criminal Procedure.

With the aforesaid observations, the revisional application being CRR 1846 of 2019 is disposed of.

All pending connected applications, if any, are consequently disposed of.

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

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

(Tirthankar Ghosh, J.)