

06-04-2022
Subha
Item no.65
Ct no.34

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction

C.R.R 2149 of 2019

In the matter of : **Rajib Sikdar**petitioner.

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

Mr. Amitava Ghosh
Mr. Sirshendu Bikash Pal
....for the petitioner.

Supplementary affidavit so filed by the learned advocate for the petitioner be kept with the record.

Mr. Ghosh, learned advocate appearing on behalf of the petitioner submits that the application under Section 245 of the Code of Criminal Procedure was dismissed by the learned Magistrate and the evidence which has been adduced falls short of framing of the charge also.

Learned advocate for the petitioner has drawn the attention of this court to the oral and documentary evidence, which is already on record.

Learned advocate for the petitioner submits that the dispute arose as within the specified time the complainant made no payment and on a false pretext, the present case has been initiated.

It is the submission of the learned advocate that the shop room is still available and the petitioner did not have any intention to deprive the complainant.

I have glanced through the evidence, which has been filed by way of a supplementary affidavit as also the evidence so adduced. It appears that except the agreement, no document has been relied upon by the complainant particularly with respect to the subsequent payment of Rs.40,000/- within a period of six months as provided in the agreement.

Having regard to the same and the manner in which the application under Section 245 of the Code of Criminal Procedure has been drafted and placed before the learned Magistrate, I direct the learned advocate appearing for the petitioner to file a fresh application under Section 245 of the Code of Criminal Procedure.

The learned Magistrate would afresh hear out the application under Section 245 of the Code of Criminal Procedure keeping in mind the evidence which has already been adduced for the purposes of consideration of charges, as the case is based on documentary evidence and, prima facie, it appears that the documents are lacking in the present case.

Consequently, the order dated 29.05.2019 passed by the learned Judicial Magistrate, 3rd Court, Barrackpore is set aside.

Accordingly, the present revisional application being CRR 2149 of 2019 is allowed.

Learned Magistrate is directed to dispose of the application under Section 245(3) of the Code of Criminal Procedure (which the learned advocate undertakes would be filed within a period of three weeks from date) within a period of sixty days from the date of filing of the application under Section 245(3) of the Code of Criminal

Procedure.

All pending applications, if any, in connection with the revisional application, are consequently disposed of.

All concerned parties are to act in terms of a copy of this order duly downloaded from the official website of this court.

[Tirthankar Ghosh, J]