

18.07.2022
Item No. 13
Court No.32
Avijit Mitra

**FMA 81 of 2021
with
IA No. CAN 1 of 2019 (Old No.CAN 10240 of 2019)
with
IA No. CAN 2 of 2022**

**Supratik Ghosh
Versus
State of West Bengal & ors.**

Mr. Tapas Dutta
...for the appellant
Mr. Subhabrata Datta,
Mr. Sanatan Panja
....for the State

The present appeal has been preferred challenging an order dated 14th August, 2019 passed in a writ petition being WP No.15422 (W) of 2019.

Mr. Dutta, learned advocate appearing for the appellant submits that without considering the arguments, as advanced on behalf of the appellant/writ petitioner, the learned Single Judge had abruptly disposed of the writ petition observing *inter alia* that the writ petition itself is not maintainable.

He argues that in the impugned order the learned Single Judge had not specified the authority whom the appellant ought to have approached instead of filing of the writ petition and had also not considered all the reliefs, as claimed by the appellant.

He submits that the learned Single Judge ought to have appreciated that alternative remedy cannot be a bar towards preference of the writ petition.

Mr. Panja, learned advocate appearing for the State denies and disputes the contention of the appellant.

In connection with the present appeal, the appellant has filed an application being CAN 2 of 2022 for consideration of additional evidence and the same is taken up for hearing along with the appeal.

Records reveal that the appellant filed a complaint case being Case No.C-4108 of 2011 before the learned Judicial Magistrate, 2nd Court, Alipore. Alleging that the said proceeding had been unnecessarily delayed, the appellant preferred a revision application being CRR No.3 of 2019 which was disposed of by an order dated 5th March, 2019 with a direction upon the learned Magistrate to conduct the proceeding expeditiously. Subsequent thereto, by an order dated 16th November, 2019, the learned Magistrate was pleased to discharge the accused persons. Aggrieved by the said order, the appellant preferred a revision application being CRR No.188 of 2020. The same was also disposed of by a judgment dated 10th January, 2020 setting aside the order impugned.

We have heard the learned advocates appearing for the respective parties and considered the pleadings as well as the reliefs, as claimed in the writ petition.

The principal grievance of the appellant was that the learned Magistrate had not complied with the order dated 5th March, 2019 passed in CRR No.3 of 2019. Dealing with such issue the learned Single Judge in the order impugned observed that had there been any failure on the part of the concerned Judicial Officer to comply with the order passed by the Hon'ble High Court, the litigant ought to have approached the appropriate forum instead of preferring the writ petition. The other relief, as prayed for in the writ petition was to withdraw the proceeding from the learned Judicial Magistrate, 2nd Court, Alipore and to transfer the same to the learned Chief Judicial Magistrate. The said issue also could not have been adjudicated in the writ petition.

In view thereof, we do not find any infirmity in the order impugned warranting interference of this Court in the present appeal.

The application being CAN 2 of 2022 is disposed of and the appeal along with the application for appropriate order being CAN 10240/1991 are dismissed.

There shall, however, be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the learned advocates for the parties.

(Raja Basu Chowdhury, J.) (Tapabrata Chakraborty, J.)