

25.08.2022

Ct No. 21

D/L 242

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C.R.R. 2979 of 2017
With
IA No. CRAN 1 of 2017 (Old No. 4972 of 2017)
With
CRAN 2 of 2022
With
CRAN 3 of 2022

Re: An application under Section 401 read with Section 482 of the Code of Criminal Procedure, 1973.

In re : **Sarkat Ali Sekh @ Sarkat Sekh,**

... Petitioner

Mr. Shamit Sanyal,
Ms. Shahana Nazin

... for the petitioner

Mr. Swapan Banerjee,
Mr. Suman De,

... for the State

Re: CRAN 3 of 2022

This is an application for restoration of the application being CRAN 2 of 2022.

It appears that the present revisional application being CRR 2979 of 2017 along with CRAN 1 of 2017 (Old No. 4972 of 2017) was dismissed for default on 09.06.2022 since the petitioner could not appear before this Court when the matter was called.

The petitioner filed an application being CRAN 2 of 2022 for restoration of the said revisional application. The said restoration

application being CRAN 2 of 2022 was also dismissed for default on 20.06.2022 when no one appeared before this Court in support of the restoration application.

Having regard to the averments made in the applications, I am of the view that the petitioner was prevented by sufficient cause from not appearing before this Court on 20.06.2022 when the restoration application being CRAN 2 of 2022 was taken up for hearing.

Accordingly, the order dated 20.06.2022 is recalled. The restoration application being CRAN 2 of 2022 is restored to its original file and number.

The application for restoration being **CRAN 3 of 2022** is allowed.

Re: CRAN 2 of 2022

This is an application for restoration.

It appears that the present revisional application CRR 2979 of 2017 along with CRAN 1 of 2017 (Old No. 4972 of 2017) was dismissed for default on 09.06.2022.

Having regard to the averments made in the restoration application, I am of the view that the petitioner has sufficiently explained the reason for not appearing before this Court when the matter was taken up for hearing on 09.06.2022.

Accordingly, the order dated 09.06.2022 is recalled. The revisional application being CRR 2979 of 2017 along with CRAN 1

of 2017 (Old No. 4972 of 2017) is restored to its original file and number.

The application for restoration being **CRAN 2 of 2022** is allowed.

Re: CRAN 1 of 2017 (Old No. 4972 of 2017)

This is an application for necessary correction in the cause title of CRR 2979 of 2017.

It has been submitted by the learned advocate for the petitioner that in the address of the opposite party nos. 4 to 9, the relevant district was inadvertently mentioned as “Purba Medinipur” instead and place of “Burdwan”.

Accordingly, liberty is granted to the petitioner to correct the cause title of the revisional application.

The application being CRAN 1 of 2017 (Old No. 4972 of 2017) is allowed.

Re: CRR 2979 of 2017

The petitioner on 20.07.2017 filed a protest petition under Section 173(8) of the Code of Criminal Procedure, 1973, before the learned Additional Sessions Judge, Kalna, in connection with Sessions Case No. 65 of 2016(ST No. 34 of 2017). The said application was taken up for hearing on 04.08.2017 by the learned Additional Sessions Judge, Kalna.

By the order impugned, the learned Additional Sessions Judge expressed his views that since the petitioner did not file any protest petition before the learned Additional Chief Judicial

Magistrate, Kalna, he lost his opportunity. The learned Additional Sessions Judge was of the opinion that at that stage no relief could be granted to the petitioner. Accordingly, the learned Additional Sessions Judge rejected the protest petition filed by the petitioner. By the same order, learned Additional Sessions Judge framed charges under Sections 302/201/120B/34 of the Indian Penal Code, 1860, against the accused persons and the dates were also fixed by the learned Additional Sessions Judge for trial.

It appears that due to stay order granted by this Court in this revisional application, after framing of charges, the trial could not proceed any further.

I am of the view that the learned Additional Sessions Judge was not right in holding that since no protest petition was filed before the learned Magistrate, no petition could be maintained before him. The learned Sessions Judge has the power to order further investigation in terms of Section 173(8) of the Code of Criminal Procedure, 1973, as has been decided by this Court in the judgment and order passed in CRR No.18 of 2021 (Anchal Adikary Vs. The State of West Bengal and another). The relevant parts of the said judgment are quoted below:

“16. It is, therefore, clear that once the case is committed under Section 209 of the Code by the Magistrate to the Court of Session, the Sessions Judge assumes unfettered original jurisdiction to take cognizance of an offence by operation of Section 193 of the Code. In exercise of such jurisdiction, a Court of Session if, after considering all relevant materials, finds that the investigation is incomplete, it may direct further investigation. Such power is implicit in the jurisdiction of the Court of Session to take cognizance of the offence.

17. Any argument to the contrary will lead to an anomalous situation where, in less serious offences, a Magistrate would have the power to order for a further

investigation if he disagrees with the police report, but a Sessions Judge being a higher Court, dealing with the serious offences, would be powerless and a mute spectator when he is faced with a police report prepared on the basis of a flawed investigation.

21. In the light of the judgment delivered in **Vinubhai** case, it has to be understood that the power of the Sessions Court to direct such further investigation can be exercised up to the stage of framing charges under Section 228 of the Code of Criminal Procedure, 1973 and such power, in an appropriate case can be exercised suo motu.”

In that view of the matter, the order impugned cannot be sustained. Accordingly, the order impugned dated 04.08.2017, insofar as it relates to rejection of the protest petition filed by the petitioner is set aside.

The learned Additional Sessions Judge, Kalna is directed to consider the application for further investigation filed by the petitioner on merit in accordance with law within a period of three months from date of communication of this order.

CRR 2979 of 2017 is accordingly disposed of.

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

(Kausik Chanda, J.)