

18.11.2022
Item No.
BR

CRR 4607 of 2009

In the matter of : Satyendra Nath Majumder

Mr. Milon Mukherjee, Senior advocate,
Mr. S. Sarkar for the Petitioner

This revisional application is filed for quashment of proceeding being Special Case No. 8 of 1992 pending before the learned Special Judge-cum-Additional District and Sessions Judge, Cooch Behar which arose out of Mathabhanga P.S. Case No. 1 dated 2.1.1984 under Section 380 of the Indian Penal Code as against Satyendra Nath Majumder and also quashing of the order passed on 29th July, 2009 by the learned trial Court thereby issuing process in the name of the petitioner .

Briefly stated the petitioner as Branch Manager , Life Insurance Corporation of India informed the Officer-in-Charge of Mathabhanga P.S. about the commission of theft in respect of money amounting to Rs. 28,204.32/- and four cheques amounting to Rs. 5742.60/-. Based on such information Mathabhanga P.S. case no. 1 of 1984 was registered under Section 380 of the Indian Penal Code and police submitted charge sheet against accused Shyamal Kumar Deb. On 2nd April, 2009 the Public Prosecutor conducting the prosecution filed an application under Section 319 of the Cr P C stating, inter alia, that the money was kept by the Manager in safe custody and padlock was put but the key was kept in the custody of the Manager. Hence Manager should be added as an accused under Section 319 of the Cr P C. Learned trial Court while

disposing of the application by passing a cryptic order held that since the prayer under Section 319 Cr P C was not opposed by learned defense counsel and learned defense counsel prayed before the Court to proceed with the trial of the present accused person first, summon could be issued upon the Branch Manager Satendra Nath Majumder. Section 319 of the Cr P C conferred the power upon the learned Court under Chapter XII of the Cr P C to proceed against other persons appearing to be guilty and sub-Section 1 of Section 319 says that in course of enquiry trial of offense if it appears from the evidence that any person not being accused committed any offense for which such person can be tried together with the accused, the Court may proceed against such person for the offense appears to have been committed by him.

Here in this case as I find from the record learned trial Court considered a petition filed by the learned advocate for the State and issued the process against the de facto complainant. Learned trial Court did not take any decision to proceed against the de facto complainant on the basis of any evidence on record. Therefore, in my opinion, learned trial Court committed gross error while invoking the provision of Section 319 of the Cr P C and if the impugned order is allowed to remain in force it would amount to miscarriage of justice. In my view it is a fit case to step in and to quash the order dated 29th July, 2009 passed by learned trial Court in Special Case No. 81 of 1992.

The criminal revision is, thus, disposed of .

Let a copy of the order be sent to the learned trial Court for information and necessary action. Applications, if any, stands disposed of.

All parties are to act on the server copy of this order duly downloaded.

Urgent photostat certified copy of this order, if applied for, be given to the learned Advocates for the parties on the usual undertakings.

(Siddhartha Roy Chowdhury, J.)