

23.06.2022
S/L No.3
KS

C.R.R. 3181 of 2014
Sri Nantu Chakraborty
Vs.
State of West Bengal & Ors.

Mr. Ranjit Kumar Jaiswal

Mr. N. Pradhan

.....For the Petitioner

Mr. Bidyut Kumar Roy

.....For the State

Petitioner filed this revisional application under Article 227 of the Constitution of India assailing order dated 28.04.2014 passed by Learned Additional Sessions Judge, 3rd Court, Tamruk, Purba Medinipur in Criminal Revision No.06 of 2013 dismissing the revisional application filed under Section 397/399 of the Code of Criminal Procedure which was filed challenging order dated 17.10.2012 passed by Learned Chief Judicial Magistrate, Purba Medinipur in C.R. Case No.1111 of 1991 under Sections 465/ 468/ 471/ 419/120B of the Indian Penal Code.

It is submitted by learned advocate for the petitioner that this case relates to forgery of a deed. The complaint was lodged by the petitioner, Nantu Chakraborty alleging that his signature in a deed was forged by the accused persons. After examination of several witnesses accused persons, Malina Chakraborty and Manotosh Chattopadhyay were examined under Section 313 of the Code of Criminal Procedure on 2nd July, 2011. Learned advocate further submits that in course of

examination under Section 313 the Learned Chief Judicial Magistrate instead of putting questions to the accused persons on the basis of evidence on record had confronted the accused with questions which were not in evidence. Learned advocate submits that the F.I.R. case is accused persons committed forgery by forging the signature of Nantu Chakraborty but while examining accused Malina Chakraborty under section 313 of Cr. P.C. on 02.07.2011 learned Magistrate has put a question to him that the deed was forged by forging signature of Nantu Chakraborty and Sasanka Chakraborty which is contrary to evidence.

Learned advocate further submits that this matter was raised before Learned Additional Sessions Judge, 3rd Court, Tamluk, Purba Medinipur in Criminal Revision No.6 of 2013 but the same was dismissed. Learned advocate urged that the examination of the two accused persons under Section 313 of the Code of Criminal Procedure may be set aside and the learned Court may be directed to examine the accused persons afresh on the basis of evidence on record.

Learned advocate for the State is present.

No one appeared for the opposite party nos.2 and 3 even service of notice.

Perused the application for revision and the impugned order dated 28.04.2014, copies of the evidence adduced by prosecution witnesses as well as examination of accused persons under Section 313 of the Code of Criminal Procedure, I find that accused Malina Chakraborty was asked a question to the effect that the witnesses have

stated that on 03.06.2019 she alongwith other accused persons have forged document wherein they put the signature of the complainant and Sasanka Chakraborty.

On traversing the evidence, I find that the signature of Nantu Chakraborty on the impugned deed is the matter of contention. It is, therefore, apparent that the name of Sasanka Chakraborty should not have been put to the accused person at the time of examination. I find that examination of the accused persons under Section 313 is intrinsically bad and are not in consonance with the evidence on record.

The observation made by Learned Additional Sessions Judge, 3rd Court, Tamluk in the impugned order to the effect that "it is not understood how the complainant has been aggrieved by such statement given by the accused persons u/s 313 of the Code of Criminal Procedure. Under Section 313(3) it was the option of the accused to give or not to give the answer", appears to be misdirected as the wrong question put to the accused during examination under Section 313 Cr. P.C. which is not there in evidence would adversely effect the case of the complainant and will dilute the charge.

In such view of the matter, the impugned order is set aside.

The examination under Section 313 of the two accused persons made by the Learned Chief Judicial Magistrate on 02.07.2011 are also set aside. Learned Magistrate is directed to examine the accused persons afresh under Section 313 of the Code of Criminal Procedure by confronting them with materials consistent with the evidence on record.

In this context, it is worthwhile to note that he will take recourse to Section 313(5) of the Code of Criminal Procedure and asked the complainant and the accused persons if necessary to formulate the suggested questions on the basis of evidence. The learned Magistrate shall consider the propriety of such questions and finally formulate the questions on his own.

Accordingly, the revisional application is allowed and C.R.R. 3181 of 2014 is disposed of.

Interim order, if any, stands vacated.

Let a copy of this order be communicated to Learned Additional Sessions Judge, 3rd Court, Tamluk, Purba Medinipur and also to Learned Chief Judicial Magistrate, Tamluk for information.

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

(Ananda Kumar Mukherjee, J.)