

Form J(1)

**IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
Appellate Side**

**Present :
The Hon'ble Justice Bibek Chaudhuri**

**CRAN 3 of 2022
In
C.R.R. 127 of 2022**

***Rohit Kayan & Anr.
Vs.
The State of West Bengal & Anr.***

**For the petitioner : Mr. Anirban Dutta, Adv.
Mr. Sayantan Sinha, Adv.
Mr. Aditya Roy, Adv.**

For O.P. No.2. : Mr. Anirban Ghosh, Adv.

**For the State : Mr. Ranabir Roy Chowdhury, Adv.
Mr. Mainak Gupta, Adv.**

Heard on : 16.02.2023

Judgment On : 16.02.2023.

Bibek Chaudhuri, J.

The petitioners are the accused persons in G.R. Case No.149 of 2020 in which charge-sheet has been filed against the petitioners under Sections 420/406/120B of the Indian Penal Code. The aforesaid case arose out of Hare Street Police Station Case No.31 of 2020 dated 31st January, 2020.

The petitioners being the accused persons have prayed for quashing of the above-mentioned criminal case instituted on police

report against them mainly on ground that during investigation, the de-facto complainant herself filed an application that the dispute between the parties had been amicably settled and the de-facto complainant did not want to proceed with the Hare Street Police Station Case No.31 of 2020 and he had no objection if the accused persons were released on bail.

It appears from the order dated 8th December, 2020 that the learned Chief Metropolitan Magistrate took cognizance of the aforesaid application filed by the de-facto complainant and granted bail to the accused persons.

It is also submitted by Mr. Dutta, learned Advocate for the petitioners that the de-facto complainant also wrote a letter to the Joint Commissioner of Police, Kolkata requesting him to drop the investigation of the case. In spite of such petition filed by the de-facto complainant, the Investigating Officer filed charge-sheet in the above-mentioned case against the petitioners under Sections 420/406/120B of the Indian Penal Code.

The learned Advocate on behalf of the de-facto complainant/private opposite party submits that talk of amicable settlement was arrived at on genuine belief that the accused persons would transfer entire money which the de-facto complainant had invested for the development of the business of the Company of

which, the accused No.1 is a Director and accused No.2 is the Company Secretary. Since entire money has not been paid, question of amicable settlement does not arise.

It is accepted proposition of the Evidence Act that in case of controversy or conflict between oral statement and the documentary evidence, document shall prevail. The application dated 8th December, 2020 filed by the de-facto complainant on affidavit is a document submitted before the competent Court of law for consideration. The learned Chief Metropolitan Magistrate duly considered the said documents and granted bail to the accused persons. During investigation of the case, the Investigating Officer recorded the statement of the de-facto complainant where he stated that he does not want to proceed with the Hare Street Police Station Case No.31 of 2020. The de-facto complainant is the author of the case. When he did not want to proceed with the case, this Court fails to follow as to why charge-sheet was submitted against the petitioners.

Since charge-sheet have been submitted against the petitioners before the learned Chief Metropolitan Magistrate, Kolkata, the instant revision is disposed of directing the learned Chief Metropolitan Magistrate, Kolkata to consider the application filed by the de-facto complainant for amicable settlement of the dispute, the statement of

the de-facto complainant under Section 161 of the Code of Criminal Procedure and other relevant documents at the time of consideration of charge.

The learned Magistrate may also consider as to whether the application for amicable settlement of the dispute filed by the de-facto complainant operates as estoppel against initiation of criminal proceeding by filing charge-sheet against the petitioners.

It is made clear that on due consideration of the documents mentioned above, the learned Magistrate shall take independent decision as to whether in the instant case charge should be framed against the accused persons or they will be discharged without being influenced in any way by any observations made in this order.

The parties are at liberty to act on the server copy of the order.

(Bibek Chaudhuri, J.)

**Mithun De/
A.R. (Ct).
SI No.82.
D/L.**