

Form No.J(1)

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION**

Present:

The Hon'ble Justice Tirthankar Ghosh

C.R.A. (SB) 25 of 2023

**Debabrata Mukherjee
versus
The State of West Bengal and another**

For the Appellant : Mr. Manik Lal Poddar.

For the State : Mr. Arijit Ganguly,
Mr. Sanjib Kumar Dan.

For the Respondent No. 2. : Mr. Soumya Roy.

Heard On : 31.03.2023.

Judgement On : 31.03.2023.

Tirthankar Ghosh, J. :

Earlier on 20.03.2023, Mr. Avirup Chatterjee, learned advocate appeared on behalf of the respondent no.2 and prayed for an accommodation. In presence of the learned advocate, the matter was fixed on 24.03.2023. On 24.03.2023, the learned advocate for the respondent no.2 did not appear. Today when the matter is called, again an accommodation has been sought on his behalf.

Learned advocate for the appellant has been regularly appearing before this Court.

The records of the case reflect that the complaint was filed on 27.02.2020. Learned Additional Chief Metropolitan Magistrate, Calcutta was pleased to take cognizance of the offence and transferred the case to the learned Metropolitan Magistrate, 11th Court, Calcutta. On 05.03.2020, learned Additional Chief Metropolitan Magistrate, Calcutta was pleased to examine the complainant and on perusal of the materials on record which included the affidavit-in-chief and other documents, issued process so far as the accused person is concerned. The order dated 15.04.2020 reflects that no service return was received in respect of the issuance of summons and the next date was fixed on 02.06.2021. By that time, the pandemic set in and the records reflect that the matter appeared on 02.06.2022 wherein similar reflections have been endorsed by the learned Metropolitan Magistrate, 11th Court, Calcutta. Thereafter a seal incorporating an order dated 22.12.2021 is reflected from where it is seen that show cause was issued to the complainant and the date has been fixed on 09.03.2022. The learned Magistrate recorded that no steps were taken by the complainant till 1.15 p.m. and as such, dismissed the complaint for default under Section 256(1) of the Code of Criminal Procedure and acquitted the accused person discharging him from his bail bond. The ordersheets do not reflect whether the accused person

appeared before the court or not. When no service return was there in the orders dated 15.04.2020 and 02.06.2022, surprisingly the order dated 09.03.2022 reflects that the accused was discharged from his bail bond and the surety concern also stands discharged from his bond. At least these orders do reflect non-application of mind at the instance of the learned Metropolitan Magistrate, 11th Court, Calcutta. Accordingly, the order dated 09.03.2022 passed by the learned Metropolitan Magistrate, 11th Court, Calcutta is hereby set aside.

The complainant will appear before the court on or before 28.04.2023 and deposit requisites for fresh summons for appearance of the accused person. The learned Magistrate will take the case to its logical conclusion in accordance with law.

The criminal appeal being CRA (SB) 25 of 2023 is, thus, disposed of.

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

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

(Tirthankar Ghosh, J.)

