

Form J(1)

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

Present :

The Hon'ble Justice Bibek Chaudhuri

C.R.R. 781 of 2022

Aloke Ghosh

Vs.

Ayanava Ghosh & Anr.

**For the petitioner : Ms. Jharna Biswas, Adv.
Ms. Susmita Biswas Chowdhury, Adv.**

Heard on : 04.05.2023.

Judgment On : 04.05.2023.

Bibek Chaudhuri, J.

Petitioner is the de-facto complainant of BGR Case No.1628 of 2021 now pending before the learned Judicial Magistrate, 8th Court, Alipore. On the basis of a written complaint submitted by the petitioner, police registered Bishnupur Police Station Case No.251 of 2021 dated 26th April, 2021 against three accused persons namely Ashoke Ghosh, Gopa Ghosh and Ayanava Ghosh. After investigation police submitted charge-sheet against two accused persons namely Ashoke Ghosh and Gopa Ghosh under Sections 447/341/323/506/34 of the Indian Penal Code.

By an order dated 12th July, 2021, the learned Additional Chief Judicial Magistrate, Alipore took cognizance of offence on the basis of

the charge-sheet against accused Ashoke Ghosh and Gopa Ghosh. However, in the said order, there is no record regarding the fate of accused Ayanava Ghosh. In the charge-sheet also it is not stated that Ayanava Ghosh has been discharged for want of evidence against him. As accused Ayanava Ghosh was not sent up for trial, the complainant was entitled to get a notice so that he may file an appropriate application in the form of protest petition before the learned Court of the Magistrate. Since no opportunity was granted to the de-facto complainant/petitioner, he moved the Court of the learned Sessions Judge in revision assailing the order of cognizance taken by the learned Additional Chief Judicial Magistrate. The learned Sessions Judge summarily dismissed the said revision in Criminal Motion No.146 of 2021 vide order dated 18th December, 2021 holding, *inter alia*, that the impugned order is interlocutory in nature and in view of bar created under Section 397(2) of the Code of Criminal Procedure, the impugned order is not revisable.

Having heard the learned Advocate for the petitioner and on perusal of the record I am surprised to note how an order of taking cognizance of offence against the accused persons becomes interlocutory order. Whenever a person is subjected to criminal prosecution, his fundamental and legal right is affected in view of the fact that he becomes an accused in a case. Similarly when the

complainant makes specific allegation against a person of committing some offence and the said person is not sent up for trial, complainant is entitled for a notice from the Court of the learned Magistrate so that he can file protest petition before the learned Magistrate stating his case on the point of loopholes in investigation. The complainant has not got such opportunity. The order dated 12th July, 2021 passed by the learned Additional Chief Judicial Magistrate, Alipore is also not an interlocutory order. Therefore, the impugned order dated 18th December, 2021 passed in Criminal Motion No.146 of 2021 is set aside.

The revisional application is allowed.

The learned Judicial Magistrate, 8th Court at Alipore is directed to serve a notice upon the de-facto complainant informing him that accused Ayanava Ghosh has not been sent for trial in the charge-sheet and invited his opinion on the charge sheet filed against accused Ashoke Ghosh and Gopa Ghosh only.

With the above direction, the instant revision is disposed of.

The petitioner is at liberty to act on the server copy of the order.

(Bibek Chaudhuri, J.)

**Mithun De/
A.R. (Ct).
SI No.2688.
M/L.**