

CRR 562 of 2009

In the matter of : Vikash Kumar Singh

Mr. Milon Mukherjee
Mr. Rahul Ganguly for the petitioner

Mr. B.K. Ray
Ms. Sima Biswas . . . for the State

This application under Section 482 of Code of Criminal Procedure challenges the order dated 07.01.2009 passed by the learned Metropolitan Magistrate, 7th Court, Calcutta dismissing the application filed by the petitioner before this Court on 26.11.2007 seeking order to commit case and counter case to the Court of learned Sessions Judge for disposal.

Briefly stated, at the instance of Indra Moni Dutta who informed the jurisdictional police station about an incident that took place at 22.00 hours of 10.5.2003 at 77, Lenin Sarani, Calcutta, Police registered Taltala P.S. Case No. 93 of 2003 dated 11.5.2003. Over the self-same incident prior to Indra Mohan Datta, Smt. Sikha Singh also informed the jurisdictional police station. Based on such information Taltala P.S. Case No. 92 dated 11.5.2003 was registered. After investigation, police submitted charge sheet against the accused persons in Taltala P.S. Case No. 93 of 2003 under Sections 148/149/307/380/427/354 of the Indian Penal Code. While investigation of Taltala P.S. Case No. 92 was culminated into submission of charge sheet under Section 323/324/354/380/427/34 of the Indian Penal Code. Since both the

case and counter case arose out of identical incident the petitioner filed an application before the learned jurisdictional Magistrate to commit the case, which is not otherwise triable by the learned Court of Sessions, together with the Taltala P.S. Case No. 93 of 2003, exclusively triable by the Court of Sessions for disposal by the learned Sessions Court. Learned Judicial Magistrate, however, by the impugned order refused to accede to the prayer of the petitioner on the ground that application filed by the petitioner, Smt. Sikha Singh before this Hon'ble Court under Section 482 of the Code of Criminal Procedure being C.R.R. 2184 of 2008 was dismissed.

Drawing my attention to the impugned order, Mr. Milon Mukherjee, learned senior counsel representing the petitioner submits that it is no more res integra that case and counter case or cross case should be disposed of by the same Court and on the same day which the learned Metropolitan Magistrate, 7th Court, Calcutta failed to appreciate.

In support of his contention, Mr. Mukherjee, relies upon judgements of Hon'ble Supreme Court pronounced in Nathi Lal and Others vs. State of U.P. and Others reported in 1990 (Supp) SCC 145 and Sudhir and Others vs. State of M.P. reported in (2001) 2 SCC 688.

It is settled principle of law that in the interest of fair procedure the case and cross case should be disposed of by the same Court.

Here in this case, though the accused persons have not been found prima facie guilty of committing offence exclusively

triable by the Court of Session, it should be committed to the Court of Sessions for trial along with Taltala P.S. Case No. 93 of 2003. The impugned order, therefore, suffers from infirmity and is set aside.

Learned Metropolitan Magistrate, 7th Court, Calcutta is directed to comply with the provision of Section 209 of Cr.P.C. and thereby to commit the case to the Court of learned Sessions Judge who is in seisin of the other case, of course after compliance of Section 207 of the Code of Criminal Procedure, if necessary.

The lis is thus disposed of.

Order of stay, if any, stands vacated.

Let a copy of this order be sent to the learned Trial Court for information and necessary action.

(Siddhartha Roy Chowdhury, J.)