

22-03-2023
Subha
Item no. 20
Ct no.34

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction

**C.R.R 567 of 2021
with
CRAN 1 of 2021**

**Mahejabin Bibi
-versus-
The State of West Bengal & Ors.**

Re: An application under Sections 401/397 read with Section 482 of the Code of Criminal Procedure.

Mr. Surajit Basu
.....for the petitioner.

Mr. S. G. Mukherji, Id. PP,
Ms. Faria Hossain
Ms. Baisali Basu
.....for the State.

Ms. Sreyashee Biswas
...for the O. P. Nos. 2, 4 to 7.

Re : CRAN 1 of 2021(Sec. 5. Appln.)

An application filed under Section 5 of the Limitation Act has been preferred for condoning the delay of 910 days for filing the present revisional application. The ground so assigned in the said application is that the petitioner was not aware regarding the outcome of Sessions Trial No. 7(7) 2015 arising out of Rajarhat P. S. Case No. 53 of 2013 dated 06.04.2013 and gathered knowledge when the proceeding in M. Case No. 308 of 2013 was progressing before the learned Chief Judicial Magistrate, Barasat.

Ms. Biswas learned advocate appearing for the private opposite parties files affidavit-in-opposition and submits that the contention so raised regarding the date of knowledge is ex facie bad in

law as there were other scope for the lady/petitioner for having knowledge regarding the conclusion of the trial. Additionally, it has been submitted that purposely the petitioner did not cooperate with the trial court and has taken up this point at a belated stage thereby interfering with the liberty granted. To that effect, learned advocate relied upon a decision of Majji Sannemma alias Sanyasirao –vs- Reddy Sridevi & Ors. reported in 2021 SCC OnLine SC 1260 wherein the Hon'ble Supreme Court was dissatisfied with the explanations offered in the application under Section 5 of the Limitation Act and by relying upon the earlier decisions of the Supreme Court opined that in an application for condonation of delay until and unless the explanations are such that they create a satisfactory explanation, the delay should not be condoned.

Mr. Mukherji, learned Public Prosecutor appears on behalf of the State and mainly contends on the merits of the case which will be dealt with later. Having regard to the nature of the order which is under challenge and the reasons so assigned by the petitioner in the background of the present facts of the case that the information relating to the conclusion of trial of the present criminal case was not available to her and the same came to her knowledge during the hearing of the application under Section 125 of the Code of Criminal Procedure before the learned Chief Judicial Magistrate, Barasat do seem to be justified. Accordingly, the application being CRAN 1 of 2021 is allowed.

Re : CRR 567 of 2021

In this case, reports were called for from Rajarhat police station in

view of the order dated 31.08.2018 passed by the learned Additional Sessions Judge-in-charge, 1st court, Barasat, North 24 Paraganas.

The order dated 31.08.2018 is set out as follows:-

“Today is fixed for order. All the accd persons on c.b are present along with the lawyers. Ld. PP in charge is also present and files hazira. The petition dt 9.7.2018 is taken up for hearing. Ld. Advocate on behalf of the accd persons filed the instant petition and prays for discharging the accd as no witnesses turned up after framing of the charge on 27.07.2015.

Perused the materials on record and ordersheet. After perusing the same, it is found that charge was framed on 27.7.2015. After that, 22 schedules which were fixed for evidence have already been gone. But in spite of receiving the summons, no witnesses turned up to prove the prosecution case. The accd persons are attending the court since 24.03.2014 after commitment. Out of six accd persons, one is near about 70 years old and other is about 65 years old and two persons are female accd persons. I think that prosecution is not interested to proceed its case. Prosecution cannot escape his liability only serving summons upon the witnesses. I. O is not at all bothered to come with his witness or to help the prosecution case. The Court can not sit as idle spectator. The accd persons can not suffer day by day for non-production of the prosecution witnesses. So, I am of considered view that to proceed the case only to abuse the process of the Court.

Hence,

It is ordered that the petition dt. 27.7.2015 is allowed accordingly, the accd persons, Mumtaz Khureshi, (2) Mahiuddin Khureshi, (3) Anchora Bibi, (4) Md. Gora @ Rejaul Khureshi, (5) Rani Bibi and (6) Md. Azizul Khureshi are hereby discharged from the present case and they are set at liberty at once”.

The reasons so assigned by the learned Sessions Court while discharging the accused persons were that charges were framed on 27th July, 2015 and after 22 schedules no evidence could be recorded as the witnesses did not respond to the summons in spite of receiving the same.

The learned trial court as such discharged all the accused persons from the charges so framed. The court while discharging its

judicial powers must be aware to the fact that there must be reasonable opportunity granted to both the sides. In this case, it has been found that there is a recording by the learned court that in spite of receiving the summons, the witnesses did not appear.

A report was called for from the Rajarhat Police Station which reflects that they contacted Barsat Police Station as the witnesses earlier were staying within the jurisdiction of Barasat Police Station, there was bifurcation of Barasat Police Station into Barasat Police Station and Madhyamgram Police Station and as a result of which the summons were reverted back to the court. As such, the observation of the learned court that in spite of receiving the summons the witnesses did not appear runs contrary to the report submitted by the police authorities in respect of execution of service of summons to the witnesses. It was also incumbent upon the learned trial court to inform the superior police authorities if the summons were not executed in spite of repeated directions passed by the court. Discharging an accused without addressing the case on merits ordinarily is not acceptable and there are no provisions in a sessions triable case to all on a sudden discharge the accused persons on an application without adhering to the procedures established by law.

I am unable to agree with the conclusion of discharge arrived at by the learned Additional Sessions Judge-in-Charge, Barasat, North 24 Pgs passed in connection with S. T. No. 7(7)/2015 on 31.08.2018. Accordingly, the said order is set aside and the revisional application being CRR 567 of 2021 is allowed.

Pending applications, if any, are consequently disposed of.

In view of the manner in which the trial of this case has been dealt with by the State as an Investigating Agency and the prosecution along with responsible persons associated with the administration of justice, I am of the opinion that there must be some monitoring regarding the trial of the case. .

Accordingly, the Deputy Commissioner of Police, who is responsible and in charge of the Rajarhat Police Station will act as Nodal Officer of the present case.

The learned trial court would summon the witnesses after fixing schedule.

The Nodal Officer will through its good office execute the notices to all the accused persons for their appearances. In case the accused persons appear they may be allowed to continue on the same bail and bond which they earlier furnished before the court.

The Nodal Officer will ensure regarding the process of the court being executed in a proper manner and particularly on the dates so fixed. All efforts must be taken by the stake-holders for concluding the trial within a period of one year from the date of communication of the order.

The Legal Remembrancer, West Bengal as also the Judicial Secretary, West Bengal is directed to take up issue regarding appointment of Nodal Officers so that all the trial courts in the districts can communicate and ventilate their grievance in case summons are not being served by the respective police authorities.

Department is directed to take steps so that this order is communicated to the learned trial court within a week from date.

All concerned parties are to act in terms of a copy of this order duly downloaded from the official website of this court.

[Tirthankar Ghosh, J]