

06.01.2023
S/L Nos.9&10
KS

C.R.R. 719 of 2021
+
IA No. CRAN 3 of 2021
Ananda Ghosh & Ors.
-Vs.-
The State of West Bengal & Anr.
With
C.R.R. 755 of 2021
+
IA No. CRAN 4 of 2021
+
CRAN 6 of 2022
Ananda Ghosh & Ors.
-Vs.-
The State of West Bengal & Anr.

Mr. Debasish Roy
Mr. Sandipan Ganguly
Mr. Phiroze Edulji
Mr. Soumyajit Das Mahapatra
Mr. Somnath Adhikary
.....For the Petitioners
Mr. Madhusudan Sur
Mr. Dipankar Paramanick
.....For the State
Mr. Kallol Basu
Mr. Anup Dasgupta
.....For the O.P. No.2

Both the revisional applications are taken up for consideration.

C.R.R. 719 of 2021

The petitioners approached this Court with a prayer for setting aside of order dated 26.02.2021 by which the warrant of arrest issued by the Learned Additional Sessions Judge, Fast Track Court – I, Barrackpore, North 24 Parganas in S.T. No.12 (9) 16 arising out of Dum Dum Police

Station Case No.942/2014 dated 04.11.2014 under Sections 306/ 34 of the India Penal Code was directed to be executed by the Inspector-in-Charge.

The grievance of the petitioners is that the petitioners were not served with the summons. The records also reflect the same and in spite of the same warrant of arrest was issued against the petitioners. The petitioners were arraigned as accused, pursuant to an order dated 17.03.2017 passed by the Learned Additional Sessions Judge, Fast Track Court – I, Barrackpore, North 24 Parganas on an application under Section 319 of the Code of Criminal Procedure filed by the Learned Public Prosecutor conducting the case.

Records reflect that thereafter on 06.06.2017 and onwards service return for the summons which were issued were awaiting and the Learned Court on 06.12.2019 issued execution of the warrant of arrest which again continued till 26th February, 2021 when the Learned Trial Court directed the Inspector-in-Charge, Dum Dum Police Station to execute the same without any delay. The records also reflect that there is no satisfaction recorded regarding either the summons being issued or any acknowledgement or refusal reaching the Court regarding the service of the summons or the warrant of arrest so issued.

Considering the same, the warrant of arrest so issued by the Learned Additional Sessions Judge, Fast Track Court – I, Barrackpore, North 24 Parganas is hereby set aside.

Accordingly, C.R.R. 719 of 2021 is disposed of.

Pending applications, if any, are consequently disposed of.

C.R.R. 755 of 2021

The petitioners have challenged the order passed on 17.03.2017 wherein the Learned Magistrate was pleased to allow application under Section 319 of the Code of Criminal Procedure. The records reflect that the Learned Magistrate was pleased to summon the present petitioners only after a part of the Examination-in-Chief of the witness namely, Sima Dey was recorded. The said witness happens to be widow of the deceased. In course of hearing of this revisional application, the Case Diary and the materials collected by the Investigating Agency was produced before this Court, the same reflected that in the letter of complaint these petitioners were named by the P.W.1, however, she made a further statement which is available in the Case Diary that she do not intend to pursue the litigation against the present petitioners because their name did not appear in the Suicidal Note. Again before the Learned Court in course of the deposition she has named the petitioners.

The Court at the stage of Section 319 before adding an accused on the basis of the evidence must be subjectively satisfied, as such, considering the totality of the circumstances, I am of the view that the evidence which would include the Examination in Chief and cross-examination of the P.W.1/ Sima Dey may be first completed. The Learned Trial Court would thereafter consider the application under Section 319 of the Code of Criminal Procedure already filed or would be filed with Supplementary contentions by the Learned Public Prosecutor. Till such time, the application under Section 319 of the Code of Criminal Procedure is decided, the summons which have been issued on 17.03.2021 be kept in abeyance. Learned Magistrate would in the circumstances consider the

application under Section 319 of Criminal Procedure Code, after the evidence of P.W.1 is over, afresh.

In view of the observations made by the Hon'ble Supreme Court in the case of *Jogendra Yadav & Ors. Vs. State of Bihar & Anr.* reported in *(2015) 9 SCC 244* the petitioners may be afforded an audience at the stage at which the Learned Trial Court considers the application under Section 319 of the Code of Criminal Procedure.

Petitioners are directed to furnish bond of Rs.5,000/- (Rupees Five Thousand Only) with one registered surety under the provisions of Section 107 of the Code of Criminal Procedure which would be exhausted or discharged pursuant to the fresh finding arrived at by the Learned Trial Court while disposing of the application under Section 319 of the Code of Criminal Procedure.

Needless to state that the direction for keeping the summons in abeyance is not an impression given upon the Learned Trial Court to automatically implicate the present petitioners. Learned Trial Court would independently consider the application afresh under Section 319 of the Code of Criminal Procedure.

With the aforesaid directions, C.R.R. 755 of 2021 is disposed of.

Pending applications, if any, are consequently disposed of.

All parties are directed to act on the server copy of this order downloaded from the official website of this Hon'ble Court.

(Tirthankar Ghosh, J.)