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27.04.2023
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C.R.A.(SB) 50 of 2023

Gautam Buddha Ghosh
Versus
Dr. Shakeel UL Rahaman and another

Mr. Abdur Rakib,
Mr. Saikat Chatterjee,
Ms. Anisha Kochar.
...for the appellant.

Mr. Saryati Datta.
...for the State.

Affidavit-of-service filed be kept with the record.

Mr. Abdur Rakib, learned advocate, appears on behalf of the appellant and challenges the order dated 22.03.2022.

Mr. Saryati Datta, learned advocate, appears on behalf of the State/respondent.

Records reflect that the learned Judicial Magistrate, 5th Court, Alipore dismissed the complaint case for non-prosecution discharging the accused person in connection with complaint case No.C421 of 2018 under Section 138 of the Negotiable Instruments Act. Records of the case also reflect that the accused was yet to appear pursuant to process being issued by the learned Magistrate in connection with the instant case.

Having considered the long period of pandemic and the dates fixed during the period of such pandemic by the learned

Judicial Magistrate the follow up by the professionals and consequent communication with the litigants could have been an issue for not pursuing such complaint case under Section 138 of the Negotiable Instruments Act which was initiated for dishonour of a cheque of Rs.5,60,000/- .

In view of such submissions advanced by the learned advocate appearing for the appellant and the fact that on the date so fixed the absence of the complainant could not have altered the fate of the case, I am of the view that another opportunity should be granted to the complainant to prove its case.

Accordingly, the order dated 22.03.2022 passed by the learned Judicial Magistrate, 5th Court, Alipore in Complaint Case No.C421 of 2018 is hereby set aside.

Thus, CRA (SB) 50 of 2023 is allowed.

The learned trial court is directed to issue fresh process upon the accused person, compel his appearance and after examination of the accused under Section 251 of the Code of Criminal Procedure take the trial of the case to its logical conclusion within a reasonable period of time.

Pending application, if any, is consequently disposed of.

Complainant is directed to go and be present before the learned Judicial Magistrate, 5th Court, Alipore on 15th June, 2023.

Department is also directed to communicate this order to the learned Judicial Magistrate, 5th Court, Alipore forthwith.

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

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

(Tirthankar Ghosh, J.)