

26.04.2023

Item No.12
Ct.No.34
dc.

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION**

C.R.R. 1213 of 2021

**Kailash Yadav and another
versus
The State of West Bengal and another**

In Re: An Application under Section 482 of the Code of Criminal Procedure, 1973.

Mr. Debangana Bhattacharjee,
Mr. Arnab Dutta,
Ms. Swarnali Saha,
Ms. Laboni Dey ... For the Petitioners.

Md. Anwar Hossain,
Ms. Sreyashee Biswas ... For the State.

This revisional application was preferred challenging the Complaint Case No. 728 of 2019 under Sections 420/406/120B of the Indian Penal Code pending before the learned Judicial Magistrate, 3rd Court, Barrackpore.

I find that in the said proceedings being Complaint Case No. 728 of 2019 by an order dated 09.03.2021, the police authorities executed a search warrant issued by the learned Judicial Magistrate, 3rd Court, Barrackpore in respect of recovery of one white colour computerized Embroidery Machine having a specific model number.

In course of hearing, a report was filed by the Officer-in-Charge, Belghoria Police Station which reflects that there is a direction upon the Sub-Inspector Koushik Ghosh, formerly posted at Belghoria Police Station, to seize another computerized Embroidery Machine having the same model number.

Learned advocate appearing for the petitioners submits that such direction was upon the police officer to be seized from the present petitioners. However, the same till date has not been executed. The same is reflected in the report submitted by the Officer-in-Charge, Belghoria Police Station. Learned advocate submits that more than 90% of the payment in respect of the Embroidery Machine complained of has been paid to the financier who initiated the complaint case and is presently pending before the learned Judicial Magistrate, 3rd Court, Barrackpore.

In view of the nature of documents required to be assessed, I grant opportunity to the petitioners to take out an application along with the documents relating to the payment made to the complainant/finance company before the learned Judicial Magistrate, 3rd Court, Barrackpore. The learned Judicial Magistrate, 3rd Court, Barrackpore will in respect of the interim custody of the Embroidery Machine assess regarding the quantum of amount which has been paid towards the machine and the percentage of default. After assessing the balance of conveyance, the learned Magistrate would be at liberty to take a fresh decision regarding the interim custody by recalling his earlier dated 09.03.2021.

So far as the merits of the complaint case is concerned, learned Magistrate will allow the complainant to adduce evidence before charge.

The petitioner would be at liberty to canvass the points relating to discharge at the stage of consideration of charges.

With the aforesaid observations, the revisional application being CRR 1213 of 2021 is disposed of.

Pending connected applications, if any, are consequently disposed of.

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 with all requisite formalities.

(Tirthankar Ghosh, J.)