

Form J(1)

**IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
Appellate Side**

**Present :
The Hon'ble Justice Bibek Chaudhuri**

**IA No.:CRAN/2/2023
in
CRR 1782 of 2022**

**Tamal Sarkar
Vs.
State of West Bengal & Ors.**

**For the petitioner : Mr. Amitabha Ghosh, Adv.,
Ms. Nabanita Chatterjee, Adv.**

**For the State : Mrs. Anasuya Sinha, Adv.,
Mrs. Subhasree Patel, Adv.**

**For the Intervenor : Mr. Soumyajit Bhatta, Adv.
Mr. Atis Kumar Biswas, Adv.,
Mr. Amit Singh, Adv.,
Mr. Juyoti Agarwal, Adv.**

Judgement on : 20.01.2023.

Bibek Chaudhuri, J.

An order dated 22nd February, 2022 passed by the learned Additional Sessions Judge, 2nd Court at Barrackpore in Sessions Trial No. 2(11) of 2018 arising out of SC 262/2017 is assailed in the instant revision by the petitioner/accused.

The fact of the case in a nutshell is as follows:-

The petitioner as executor of the last testament and Will left by one Jotindra Nath Aich filed a probate proceeding which was registered as Misc. Case No.200/2014 (P). The said proceeding was allowed by the learned District Delegate. Subsequent to the granting of probate dated 4th April, 2016 by the learned District Delegate, the opposite party No.2 filed an application for revocation of the said probate before the learned District Delegate. The probate proceeding, being contentious was transferred to North 24-Parganas. In the revocation case in the Court of the learned Additional Chief Judicial Magistrate at Barrackpore it was alleged that the present petitioner obtained probate from the Court of the District Delegate by producing allegedly false and forged documents which was included in evidence. The learned Magistrate made initial enquiry and lodged a complaint against the petitioner before the learned Chief Judicial Magistrate at Barasat which was registered as C-360/2016. The said complaint was subsequently registered as G.R. Case under Sections 191/192/195/196/199/200/201/209 of the Indian Penal Code. The learned Chief Judicial Magistrate committed the case record to the Court of the learned Additional Sessions Judge at Barrackpore on the ground that the offence under Section 195 of the Indian Penal Code is exclusively triable by the learned Court of Sessions.

The petitioner duly appeared before the learned Additional Sessions Judge, Barrackpore and the learned Sessions Judge framed charge under Sections 193/196/199/200/209/120B of the Indian Penal Code against the petitioner and fixed a date for trial.

It was pointed out by the learned Advocate for the prosecution that when the charge under Section 195 of the Indian Penal Code was dropped, the case became magistrate triable but the learned

Additional Sessions Judge held that even where trial of offences is not exclusively triable by a Court of Sessions is fixed for trial and decided by the learned Sessions Judge. The proceeding may be irregular but not illegal. Therefore, the learned Additional Sessions Judge assumed jurisdiction over himself.

The said order dated 22nd February, 2022 is under challenge in the instant revision.

I have heard the learned Advocate for the petitioner, the opposite party No.2 and the learned Public Prosecutor-in-Charge. Section 228(1)(a) of the Code of Criminal Procedure is absolutely clear on this point. The provision runs thus:-

228. Framing of charge.- (1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that that accused has committed an offence which-

- (a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, [or any other Judicial Magistrate, or, as the case may be, the Judicial Magistrate of the first class, on such date as he deems fit, and thereupon such Magistrate] shall try the offence in accordance with the procedure for the trial of warrant-cases instituted on a police report;
- (b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.

Thus, when the learned Additional Sessions Judge after framing charge found that the case is exclusively triable by the Court of the learned Magistrate, it was the duty of the learned Additional Sessions Judge to transfer the case for trial to the Chief Judicial Magistrate or

any other Judicial Magistrate of the First Class and direct the accused to appear before such Magistrate, as the case may be on a fixed date and thereupon such Magistrate shall try the offence in accordance with the procedure for trial of warrant cases instituted on a police report.

This Court is of the view that the learned Additional Sessions Judge erred in law in assuming jurisdiction on himself in spite of his finding that the offence is exclusively triable by the learned Judicial Magistrate, First Class.

For the reasons stated above, the impugned order is set aside.

The instant revision is disposed of directing the learned Additional Sessions Judge, Barrackpore to transmit the case record to the Court of the learned Additional Chief Judicial Magistrate at Barrackpore for trial.

With the above direction, the instant revision is **disposed of**.

Lower Court record be sent down to the Court below and all interim order is vacated.

(Bibek Chaudhuri, J.)

Srimanta, A.R.(Ct.)
Item No. 11.