

09.01.2023
S/L No.48
KS

C.R.R. 1482 of 2021
Swapna Haldar & Anr.
-Vs.-
The State of West Bengal

Mr. Uday Sankar Chattopadhyay
Mr. Suman Sankar Chattopadhyay
Ms. Rajashree Tah
Ms. Trisha Rakshit
Mr. Gourab Das
.....For the Petitioners
Mr. Madhusudan Sur
Mr. Dipankar Paramanick
.....For the State

Learned advocate appearing for the petitioners submits that the Investigating Agency in the charge-sheet incorporated the provisions of Sections 341/ 326/ 307/ 120B/ 34 of the Indian Penal Code, however, the learned Trial Court without assigning any reason in its order dated 19.09.2018 recorded that the charge-sheet has been submitted under Sections 341/ 323/ 325/ 506/ 34 of the Indian Penal Code. Learned Magistrate will revisit this issue relating to the applicability of the sections.

So far as the other issue is concerned one of the accused person has been discharged and to that effect prayer was advanced by the Investigating Officer. The order dated 19.09.2018 reflects that the Learned Magistrate postponed the issue of consideration of discharge on 19.09.2018 and subsequently, on 18.03.2019 without deciding the

issue transferred the case records to the Learned A.C.J.M., 2nd Court for disposal. It is a settled proposition of law that once an accused has been discharged, notice must be issued to the complainant allowing him or her to address his/her grievance before the Court whether he is satisfied or dissatisfied with the investigation and thereafter decide to proceed with the trial of the case or pass directions under Section 173(8) of the Code of Criminal Procedure.

In this case, I do not find from the records that notice was issued to de facto complainant or the injured, as such, over these two issues an interference is called for from this Hon'ble Court. Accordingly, the order dated 19.09.2018 and 18.03.2019 should be modified by the Learned Magistrate.

In view of the time which is passed in the meantime, I direct the petitioner(s) to be present before the Learned A.C.J.M., 2nd Court, Baruipur and file their application under Section 173(8) of the Code of Criminal Procedure. Learned A.C.J.M., Baruipur will direct the same to be served upon the Learned Public Prosecutor conducting the case as also upon the accused persons except the accused who has been discharged from the case. Learned Magistrate would thereafter consider the prayer for further investigation in its true and proper perspective. In case the learned Magistrate is of the opinion that further investigation is warranted directions to that extent may be passed by the Learned Magistrate. However, if in the alternative, Learned Magistrate is of the opinion that further investigation is not required, in that case,

learned Magistrate will assign reasons as to why in spite of the police authorities opining the alleged offence to be committed under Section 307/326 of the Indian Penal Code, the same was restricted to only Sections 323 and Section 325 of the Indian Penal Code in the order dated 19.09.2018. Necessary corrections, amendments, alterations, directions be passed by the Learned Magistrate as he deems fit and proper in the facts and circumstances of the instant case.

With the aforesaid directions, C.R.R. 1482 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.)