

CRR 1993 of 2009
CRAN 1 of 2009

In the matter of : Dipak Kumar Jana & Anr.

Ms. Subhanwita Ghosh ... for the petitioners

Mr. N. P. Agarwala
Mr. P. Bose, ... for the State

This criminal revision challenges the order passed by the learned Additional Sessions Judge, Fast Track (4th Court), Tamluk, Purba Midnapur in Criminal Appeal No. 03/2008 arising out of N.G.R. Case No. 758/1997 on 7th April 2009.

By the impugned judgement, learned Appellate Court was pleased to set aside the judgement and order of conviction passed by the learned Judicial Magistrate, 3rd Court, Tamluk, Purba Midnapur and remitted the case to the learned Trial Court for a fresh judgement after complying with the provision of Section 210(2) of Cr.P.C. and after hearing the argument to be advanced by the learned counsel for the parties.

Briefly stated, Ashutosh Raut, the opposite party no. 2 filed a petition of complaint before the learned Additional Chief Judicial Magistrate, Tamluk on 30.05.1997 and over the self same incident N.G.R. Case No. 758 of 1997 was registered by Officer-in-Charge, Nandakumar P.S. on the basis of an information given by Ashutosh Raut in writing. Trial commenced in respect of both the cases and on 01.7.2008, learned Judicial Magistrate, Tamluk, Purba Midnapore being the Trial Court passed an order holding inter alia "Considering all the aspects of this case I am of the view that, this court has no other option left than to try the case together

with the N.G.R. 758/1997 after invoking the provision lays down in Section 210(2) Cr.P.C. though it is in a belated stage but to avoid the further complication at the time of writing out judgment in this case and in N.G.R. Case where in common Section is 323 I.P.C. Better late than never this complaint case be tagged with the N.G.R. Case being in No. 758/97.”

In N.G.R. Case the learned Judicial Magistrate recorded an order of conviction under Section 323 of the Indian Penal Code against the accused persons for committing offence and sentenced them to suffer imprisonment for thirty days subject to the provision of Section 428 of the Code of Criminal Procedure. Without make any whisper regarding the fate of the complaint case but by passing an order on the same date i.e. 1st of July, 2008, learned Judicial Magistrate, further held that in view of the judgement passed in N.G.R. 758 of 97 the surety was discharged.

Ms. Ghosh, learned counsel appearing on behalf of the petitioners assails the impugned judgement passed by the learned Additional Sessions Judge and submits that the order passed in the complaint case was never assailed before the learned Appellate Court and learned Appellate Court, therefore, had no reason to pass the order impugned. It is further submitted that the alleged incident took place way back in 1997 almost 26 years ago. A re-trial or fresh trial would enure to the hardship on the part of the accused persons and it will be a denial of their right to life as enumerated under Article 21 of the Constitution of India. Learned Judicial Magistrate while passing the order dated 01.7.1988 though made it clear that N.G.R. Case No. 758/97 and Complaint Case No. C/619/1997 should be tagged and decided together

failed to indicate that with an order of conviction both the proceedings stand disposed of.

Learned Trial Court no doubt should have indicated clearly the fate of the complaint case. Though he made a reference to the judgement pronounced in N.G.R. 758/97 and stated that in view of the said judgement passed in N.G.R. 758/97 surety stands discharged. Therefore, there is every reason to presume that learned Trial Court recorded the order of conviction in NG.R. Case No. 758/97 which is to be considered as an order in respect of complaint case as well. Record reveals that accused was examined under Section 313 Cr.P.C. in C619/97 on 15.12.2005.

It is a settled position of law that multiple criminal proceedings cannot be initiated against the accused by the same complainant over the identical incident of offence. Otherwise criminal proceeding would become a tool of oppression. Here, in this case also, the learned Trial Court after recording evidence of the parties when came to a conclusion that the accused person was found guilty for committing offence under Section 323 of the Indian Penal Code, there is every reason to presume that the learned Trial Court had no material before him to record an order of conviction under Section 379 of the I.P.C.

True it is there is no explicit observation regarding offence committed under Section 379 of the Indian Penal Code, but I find that in the complaint case also the accused person was examined under Section 313 of the Cr.P.C. and question was put to the accused person regarding snatching of HMT wristwatch from hand and a ring from the finger of the victim person.

Under such circumstances, I am of the view that the learned Appellate Court had no reason to pass the impugned order to remand the case to the learned Trial Court. Considering the long span of time which is more than 25 years, through which the petitioners have been passing with anxiety and agony of the criminal proceeding, I am inclined to invoke the provision of Section 482 of the Code of Criminal Procedure and quash the judgment impugned.

With the quashing of the impugned judgement of the learned Appellate Court, the order of conviction stands restored. But instead of sentencing petitioners to undergo imprisonment I am of the view that ends of justice would be met if the petitioners are directed to pay fine of Rs.2,500/- each to the Secretary, D.L.S.A. Purba Midnapore within four weeks from date.

With this direction, the revisional application is disposed of along with applications.

Let a copy of this order be sent to the learned Trial Court for information and necessary action.

(Siddhartha Roy Chowdhury, J.)