

D/L1 & 2
25.04.2023
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C.R.R.1358 of 2021

In Re: An application under Section 482 of the Code of Criminal
Procedure, 1973;

Panchanan Singh
Versus
State of West Bengal and another
With
CRR 1719 of 2021
Mohbul Sk.
Versus
The State of West Bengal and another

Mr. Abhra Mukherjee,
Mr. Deepak Kumar Singh,
Mr. Saptamita Pramanick,
Mr. Sauradeep Dutta.
...for the petitioner in CRR 1358 of 2021
and the opposite party no.2 in CRR 1719 of 2021.

Mr. Swapan Banerjee,
Mr. Suman De.
...for the State in CRR 1358 of 2021.

Mr. Avishek Sinha.
...for the State in CRR 1719 of 2021.

Mr. Nepesh Majhi,
Mr. Arka Ranjan Bhattacharya.
...for the opposite party no.2 in CRR1358
of 2021 and the petitioner in CRR 1719 of 2021.

As both the revisional applications arise out of Farakka
Police Station Case No.311 of 2019 dated 14.08.2019 and the
charge-sheet filed therein, they are taken up together and disposed
of by a single order.

The Investigating Officer of the case is present in Court.
A report has been submitted. According to the Investigating Officer,

he had asked for original agreement from the complainant, but he refused to give it.

The same is resisted by the learned advocate appearing for the complainant and he submits that the original agreement was never asked for by the Investigating Officer of the case.

On the other hand, Mr. Abhra Mukherjee, learned advocate appearing for the petitioner submits that the allegations in the FIR and the charge-sheet if taken as a whole, the same fails to make out an offence under Section 420 or 406 of the Indian Penal Code and the case is one of breach of trust for which neither the offences relating to cheating or criminal breach of trust can continue. Learned advocate further submits that the case was initiated for recovery of the outstanding.

I have considered the submissions of the learned advocate appearing for the parties as also taken into account the report under Section 173 of the Code of Criminal Procedure as well as orders dated 25.11.2020 and 27.11.2020 passed by the learned ACJM, Jangipur, Murshidabad.

I find from the said orders that the accused surrendered by filing a put up petition and learned Magistrate recorded that the accused, Panchanan Singh surrendered before the court and prays for bail. Learned court thereafter recorded that the allegations are serious in nature, but at the operative part of the said order, it was observed that the bail application in respect of accused Panchanan Singh stands rejected as not pressed.

This is a serious anomaly and the accused in a

cognizable offence after surrendering if he decides not to press bail application, a judicial order either rejection of the bail or allowing the bail is to be passed by the learned Magistrate. An accused in such cases cannot just walk away from the court by not pressing the application.

I have also assessed the charge-sheet submitted in connection with the instant case wherein no documents have been relied upon and charge-sheet under Sections 406/420 of the Indian Penal Code has been filed before the learned Magistrate and cognizance is also taken.

Having considered the totality of the circumstances and the manner in which the authorities have abused their powers in connection with Farakka Police Station Case No.311 of 2019 dated 14.08.2019, I direct that further investigation be carried out by the Investigating Officer of the case for collection of necessary materials. Charge-sheet so filed be not given effect to, as fresh materials may be collected and thereafter, if required, the Investigating Officer will file a fresh report under Section 173 of the Code of Criminal Procedure. Needless to state that the materials which were collected would be taken into consideration while filing the fresh report under Section 173 of the Code of Criminal Procedure.

The orders dated 25.11.2020 and 27.11.2020 are hereby set aside.

Mr. Abhra Mukherjee, learned advocate appearing for the petitioner undertakes that the petitioner would surrender before the learned ACJM, Jangipur, Murshidabad by 19th May, 2023. If on

surrender the petitioner prays for bail, learned Magistrate will consider the same in accordance with law.

The execution of warrant of arrest so issued in connection with this case be stayed till 25th May, 2023. In case the petitioner does not surrender by the said date so fixed, learned Magistrate would issue warrant of arrest on 26th May, 2023.

With the aforesaid observations, CRR 1358 of 2021 and CRR 1719 of 2021 are disposed of.

Pending application, if any, is consequently disposed of.

Needless to state that this Court has refrained from making any comments regarding the merits of the case so far as it relates to bail is concerned.

The personal appearance of the Investigating Officer is dispensed with in connection with the case.

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.)