

03.08.2023
Serial no. 325
[G.S.D]

CRR 2790 of 2023

In the matter of : Subrata Mazumder & Anr.

... .. Petitioners

Mr. S. Chowdhury
Mr. A. Bhattacharyya
Mr. Uttam Mukherjee
Mr. Dipayan Dan
Ms. Isita Biswas
Mr. Parvez Mallick

... For the Petitioners

Ms. Baisali Basu

... For the State

The petitioners are directed to serve a copy of this revisional application upon Ms. Baisali Basu, Learned Advocate, who ordinarily appears on behalf of the State. Her appearance may be regularised by the concerned authority.

The present revisional application has been preferred challenging the order dated 11.5.2023, which was an application under Section 239 of the Cr.P.C. praying for discharge.

The background of the case reflects that the First Information Report was registered on 3rd May, 2004. The Investigating Agency on completion of investigation submitted charge-sheet on 11th May, 2004. The present petitioners have been successful in stretching the proceedings initially by filing an application under Section

239 of the Code of Criminal Procedure against which they preferred a revisional application, being CRR 3671 of 2014, which was decided by the Hon'ble High Court on 23rd July, 2015, wherein the Hon'ble High Court after considering all the issues was pleased to turn down the prayer of the petitioners, wherein the prayer for discharge was refused

Being aggrieved by such order, the petitioners preferred a Special Leave to Appeal (Crl.) ... CRLMP No(s). 120 of 2016, wherein the Hon'ble Supreme Court was pleased to observe as follows:

*"Delay condoned.
The Special Leave Petition is dismissed.
However, liberty is granted to the petitioners to take such steps as may be advised to apply before the trial Court without prejudice to the allegations made."*

The petitioners again preferred an application under Section 239 of the Code of Criminal Procedure, which was dismissed by the Learned Judicial Magistrate, 1st Court, Alipore on 11th of May, 2023.

The main thrust of contention of the petitioners are that the Hon'ble Supreme Court has granted them liberty by directing "as may be advised to apply before the Trial Court without prejudice to the allegations made."

I find that the instant case was initiated in the year 2004 and more than 19 years have passed and the present petitioners have successfully delayed the proceeding by

filing application(s) before the Learned Trial Court and challenging that before the higher forum and, by interpreting the orders of the High Court to their convenience, delayed the proceedings.

Section 240 of the Code of Criminal Procedure also states that where "... there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try and which, in his opinion, could be adequately punished by him ...".

In a proceedings, like this, under Section 498A/406 of IPC after 19 years, if charge cannot be framed then the same is a failure of judicial system for which the legislature did not incorporate the provisions of Section 498A of the Indian Penal Code.

Having regard to the repeated and belated plea, which have been taken in this case, being Regent Park P.S. Case No. 76 of 2004 dated 03.05.2004, I am not inclined to interfere with the order dated 11.5.2023 passed by the Learned Judicial Magistrate, 1st Court, Alipore, South 24 Parganas.

With the aforesaid observation CRR 2790 of 2023 is dismissed.

Pending application, if any, is also dismissed.

Needless to state that the observations made by this Court is limited for the purposes of filing the present revisional application and the Learned Judicial Magistrate will not be influenced by any observations made by this Court for the purposes of the trial or for arriving at a conclusion at the end of the trial.

Parties to act on a server copy of this order, duly collected from the official website of the Hon'ble High Court, Calcutta.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties, subject to compliance with all requisite formalities.

(Tirthankar Ghosh, J.)