

**Item no. 21**  
**Court No.236**

**IN THE HIGH COURT AT CALCUTTA**  
**CRIMINAL REVISIONAL JURISDICTION**

Present:

**The Hon'ble Justice Siddhartha Roy Chowdhury**

CRR 2983 of 2008

SMT. JYOTSNA BAL

vs.

STATE OF WEST BENGAL & ORS.

Appearance:

For the Petitioner : Mr. Suvashis Roy

For the State : Mr. B.K. Roy  
Mr. M.F. Ahmed Begg

Heard on : 18.01.2023

Judgment on : 18.01.2023

**Siddhartha Roy Chowdhury J.:**

This application under Section 482 of the Criminal Procedure Code, 1973 challenges the order passed by the learned Chief Judicial Magistrate, South 24 Parganas in T.R. Case No.14 of 2000 (arose out of case no.C-1303 of 1999) under Sections 365/342/330/385/387/120B of Indian Penal Code whereby the learned trial Court was pleased to discharge all the accused persons invoking the provisions of Section 245(1) of Criminal Procedure Code, 1973.

Heard Mr. Subhasish Roy, learned advocate for the petitioner and Mr. B.K. Roy, learned advocate for the State.

On 10<sup>th</sup> May, 1999 Smt. Jyotsna Bal filed a petition of complaint before the learned Chief Judicial Magistrate, 24 Parganas (South) stating, inter alia, that her husband Samarendra Nath Bal was the owner of the premises no.10, Hindustan Park, Kolkata-700029 and after demise of her husband she acquired the property by way of inheritance. One Dr. Balai Krishna Mitra was inducted in the ground floor of the said premises as a tenant, who left the property on 7<sup>th</sup> October, 1997 and removed some valuable belongings of the complainant. The complainant accordingly filed a petition of complaint before the learned Chief Judicial Magistrate, Alipur on 11<sup>th</sup> November, 1997 which was registered as C-1684 of 1997. It is further contended that on 21<sup>st</sup> April, 1999 at about 4 P.M. she was taken to Gariahat Police Station by force without following the proper procedure. She was arrested. Subsequently she was produced before the learned jurisdictional Magistrate on the following day when her prayer for bail was rejected. The prayer of the prosecution seeking police custody of the petitioner was allowed. During the police custody attempt was made by the accused persons to obtain her signature on blank papers. On 26<sup>th</sup> April, 1999 she was enlarged on bail on condition not to enter into the premises no.10, Hindustan Park till 10<sup>th</sup> May, 1999 without informing the investigating officer of the case. Being released on bail the petitioner came to know that accused nos.7

and 8 with the help of other accused persons occupied the ground floor of the said premises. The petitioner brought the incident to the notice of the Deputy Commissioner of Police, South Suburban Division in writing.

The learned trial Court initially issued process against the accused persons under Sections 330/34 of the Indian Penal Code. Subsequently by the order of a coordinate Bench of this Court ultimately process was issued under Sections 342/365/385/387/120B of the Indian Penal Code. The accused persons surrendered to the jurisdiction of the learned Judicial Magistrate, Alipur and following the prescribed procedure the learned Chief Judicial Magistrate recorded the evidence of witnesses examined on behalf of the complainant. In all eleven witnesses were examined under Section 244(1) of Criminal Procedure Code, 1973.

The learned trial Court thereafter called for record of CGR 1286/99 arose out of Gariahat P.S. Case No.92 dated 21.04.1999 registered under Section 448/380/114 of Indian Penal Code from the Court of learned 7<sup>th</sup> Court of Judicial Magistrate, Alipur. Upon perusal of the record the learned trial Court found that the accused no.7 Mridul Kanti Majumder set the criminal administration of justice into motion against the petitioner alleging, inter alia, that she committed an offence of criminal trespass and theft by entering into the tenanted portion of the said premises after breaking open the padlock.

The learned trial Court further derived his knowledge from the record of CGR 1286/99 about the arrest of the petitioner in connection

with the said case and discharged all the accused persons by invoking the provision of Section 245(1) of Criminal Procedure Code, 1973.

Section 245(1) envisages as follows:-

*“245. When accused shall be discharged.*

*(1) If, upon taking all the evidence referred to in section 244, the Magistrate considers, for reasons to be recorded, that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him”*

Sub-section 1 of Section 245 mandates that if upon taking all the evidence referred to in Section 244, the Magistrate considers, for reasons to be recorded, that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him.

Section 244 of Criminal Procedure Code, 1973 enunciates as follows:-

*“244. Evidence for prosecution.*

*(1) When, in any warrant- case instituted otherwise than on a police report, the accused appears or is brought before a Magistrate, the Magistrate shall proceed to hear the prosecution and take all such evidence as may be produced in support of the prosecution.*

*(2) The Magistrate may, on the application of the prosecution, issue a summons to any of its witnesses directing him to attend or to produce any document or other thing.”*

It says that when, in any warrant case the accused is brought before the Magistrate or appears, Magistrate shall proceed to hear the prosecution and take all such evidence as may be produced in support of the prosecution. A bare reading of the provision laid down in Sub-section 1 of Section 245 of CrPC it appears that the learned Magistrate is empowered to discharge an accused person only upon consideration of the evidence recorded under Section 244 of Criminal Procedure Code, 1973 and if such evidence remains unrebutted, it would not warrant his conviction.

While passing the impugned order the learned trial Court called for the record of another case being CGR 1286/99, which was pending before the learned Judicial Magistrate, 7<sup>th</sup> Court, Alipur but not at the behest of the petitioner, as laid down under Sub-section 2 of Section 244 of Criminal Procedure Code, 1973 thereby the learned trial Court exceeded its jurisdiction by causing if an infraction to the provision of law by flouting the statutory mandate.

Therefore, the impugned order warrants interference from this Court. In order to secure ends of justice I am inclined to invoke the provisions of Section 482 of Criminal Procedure Code, 1973 to set aside the order impugned.

Accordingly the order dated 19<sup>th</sup> May, 2008 passed by the learned Chief Judicial Magistrate, South 24 Parganas passed in TR Case No.14 of 2000 (arising out of case No.C-1303 of 1999) is set aside.

The learned trial Court is directed to admit the case to the file of the learned Chief Judicial Magistrate, Alipur and to consider the evidence recorded under Section 244 of Criminal Procedure Code, 1973, and to proceed with the trial of the case according to law.

CRR 2983 of 2009 is thus disposed. Application, if any, stands disposed of.

Registry is directed to forward a copy of the judgment to the learned Chief Judicial Magistrate, Alipur for information and necessary compliance.

Urgent Photostat copy of this judgment, if applied for, be delivered to the learned advocates for the parties, upon compliance of all formalities.

**(Siddhartha Roy Chowdhury, J.)**

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