

27.02.2023

Sl. 04
Court No.28
suvayan

CRR 3196 of 2016

In the matter of: **Ashoke Kumar Halder & Ors.**

....petitioners.

Nobody appears for the parties.

None appears for the petitioners even on earlier occasions on 21st December, 2022, 18th January, 2023 and 19th January, 2023.

In view of the nature of relief sought for and to avoid further delay, I am inclined to dispose of this matter on merit.

Petitioners filed this application under Section 482 of the Code of Criminal Procedure being aggrieved by and dissatisfied with an order dated 16th August, 2016 passed in Criminal Revision No. 97 of 2015 by learned Sessions Judge at Malda preferred against an order dated 21st August, 2015 passed by learned Judicial Magistrate, 1st Court at Malda in Criminal Case No. 284C/2010.

It is contended by the petitioners that the complainant/opposite party no. 2 filed a Court complaint against the petitioners to the effect that his son used to run a business of 'City Gold' ornaments in a shop room provided by the petitioner no. 1 on salami. Out of previous grudge and in order to cause financial loss to them the Petitioners in presence of his son abused the complainant and assaulted by slap, fist and blows etc. and drove out from the said shop room. They also confined them into a room threatening with dire consequences and forcibly obtained their signatures on some papers and cheques, due to fear they put their signatures. Petitioners also removed articles worth of Rs. 1 lakh

from the shop room of the son of the complainant. Accordingly, the complainant filed an application under Section 156 (3) of the Code of Criminal Procedure before the learned C.J.M., Malda praying for an order to treat the petition as complaint and pray for direction upon the local police station to lodge an F.I.R. After hearing, the learned C.J.M. rejected the prayer of the complainant/opposite party No.2 for direction upon the local police station to lodge an F.I.R. However, learned Court treated the petition as petition of complaint. After taking cognizance on 21st April, 2010, the matter was transferred to Learned Judicial Magistrate, 1st Court at Malda for its disposal.

The petitioners duly appeared and contested the case after obtaining bail. Several dates were fixed by the Magistrate for adducing evidence on behalf of the complainant but despite of fixing several dates, the complainant neither turned up nor brought any witness to prove her case as such the learned Magistrate issued a show-cause upon the complainant as to why the case shall not be dismissed. Date was fixed for show-cause on 23rd July, 2014 but no step was taken by the complainant and finally the learned Magistrate discharged the petitioners as per provision contained in Section 245 (3) of the Code of Criminal Procedure contending therein that more than 4 years have been elapsed but complainant did not bring any witness within such period.

It is further contended that against the said order the complainant filed a revisional application before the learned

Sessions Judge, Malda being Criminal Revision No. 97 of 2015. Upon consideration, the learned Sessions Judge allowed the said application and further given a chance to file show-cause before the learned Judicial Magistrate, 1st Court, Malda for the ends of justice though it ought to be rejected. No further opportunity should have been granted by the learned Sessions Judge because the petitioners were attending the Court regularly but the complainant could not bring any witness even elapsed of 4 years. Petitioners pray for setting aside the said order under challenged.

Upon consideration of the facts and circumstances and on perusal of record, this Court finds last opportunity was given by the learned Sessions Judge is justified because the complainant could not file his show cause due to sufficient reasons. Actually, when the first date was fixed i.e. on 03.04.2015 for filing show cause was holiday and thereafter it was fixed on 21.08.2015 for show cause but complaint did not appear on that date. Learned Sessions Judge allowed a single chance enabling her to file show cause before the learned Magistrate for end of justice simultaneously, learned Court below also made it clear that if the complainant fails to appear before the learned Magistrate, 1st Court, Malda on the date fixed, Court shall be at liberty to pass necessary order without affording further time to the complainant.

Accordingly, order under challenge is not perverse, which requires no interference by this Court.

Criminal Revisional Application being CRR No. 3196 of 2016 is, thus, disposed of with above observations without any order as

to costs.

Parties shall act on the server copies of this order.

Urgent Photostat certified copies of this order, if applied for, be supplied to the parties upon compliance of all the necessary formalities.

(Ajay Kumar Gupta, J.)

