

15.07.2024
rc/ct.no.34
Item No.12

**CRR No. 359 of 2023
with
CRAN No. 4 of 2023
and
CRAN No. 5 of 2024
and
CRAN No. 6 of 2024**

In the matter of : Ravi Ganesh Bharadwaj & Ors.

.....Petitioners

Mr. Milan Mukherjee
Mr. Biswajit Manna
Mr. Rahul Ganguly

...for the Petitioners

Mr. Ranjit Sarkar

....O.P.No.2 in person

Opposite party no. 2 appears in person.

Heard learned counsels for the parties.

The revisional application assails a judgment of the learned Additional District and Sessions Judge, 2nd Court, Barrackpore, North 24 Parganas on November 19, 2022 wherein the learned Judge has, in substance, made observations contrary to the order passed by this Court on September 09, 2021 in CRR No. 2327 of 2018.

By an order passed on April 16, 2021 in C.Case No. 02 of 2017, the learned Judicial Magistrate, 4th Court, Barrackpore dismissed the complaint case for default since the complainant took no steps on the said date was found absent on repeated calls despite issuance of show cause upon him vide an order dated

January 06, 2021. The complainant/ private opposite party came up before this Court in a revisional application being CRR No. 2327 of 2018 challenging the said order and by an order passed on September 09, 2021, this Court observed as follows :-

“The proper interpretation of application of the section obviously will be an order of acquittal in favour of the accused for non-appearance of the complainant.”

This Court disposed of the revisional application on such score. Subsequently, orders of the learned Judicial Magistrate dated January 06, 2021 and April 06, 2021 were assailed before the learned Additional District and Sessions Judge, 2nd Court, Barrackpore by the complainant/ opposite party and by the order impugned dated November 19, 2022, the learned Sessions Judge allowed the revisional application upon setting aside the orders of the learned Magistrate with an observation that such order of acquittal and dismissal can only be passed on the date or dates when those dates are fixed for appearance of the accused and hearing of any matter in the complaint case.

Learned counsel for the petitioner submits that after the observation made by this Court, the learned Sessions Judge had no authority to make any observation on the said issue in the revisional application filed before him and as such, the judgment needs to be quashed.

The private opposite party appearing in person submits that he was unable to appear before the learned Trial Court on the relevant dates since he was suffering from covid at that time and

the matter needs to be gone into on merits by the learned Trial Court and not dismissed by an order of acquittal in favour of the accused/ petitioner.

The primary issue which is required to be taken into consideration in the present application is whether after an observation made by this Court, the learned Sessions Judge had any authority to deal with the same issue and make any observation contrary to that of this Court.

This Court, vide an order passed on September 09, 2021, clearly observed that in view of Section 256 of the Code of Criminal Procedure, where the complainant is absent, the proper interpretation of the application of the section would be an order of acquittal in favour of the accused. In other words, this Court made a clear observation that the case ought not to have been dismissed for default but an order of acquittal in favour of the accused ought to have been made. The revisional application was disposed of since no order was required to be passed in view of the position of the complaint case.

In view of the above, this Court is inclined to hold that the learned District and Sessions Judge, 2nd Court, Barrackpore, in dealing with the merits of the order which was already dealt with by this Court in observing that the order should be read/interpreted as an order of acquittal in favour of the accused, has in fact sat in appeal over the order of this Court which is not enjoined in law. A decision arrived at by the Court could not have been reconsidered by the learned Judge.

The revisional application being CRR No. 359 of 2023 is allowed.

The judgment delivered by the learned learned Additional District and Sessions Judge, 2nd Court, Barrackpore in Criminal Revision No. 262 of 2021 be set aside/quashed.

The connected applications being CRAN No. 4 of 2023, CRAN No. 5 of 2024 and CRAN No. 6 of 2024 are disposed of accordingly.

The Lower Court Records be returned.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

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

(Suvra Ghosh,J)