

22.08.2024

Item No.5
Ct.No.35
dc.

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

C.R.A. (SB) 45 of 2024

**Manish Jain
versus
Govind Impex Limited & Ors.**

Mr. Pawan Kumar Gupta,
Ms. Sofia Nesar,
Mr. Priyanshu Kothari,
Mr. Santanu Sett ... For the Appellant.

Md. Sabir Ahmed,
Mr. Swagata Biswas,
Mr. Dhiman Banerjee ... For the Respondents.

Learned advocate appearing for the appellant submits that the appellant's father was pursuing the complaint which he had filed for dishonour of cheque under Section 138 of the Negotiable Instruments Act and the same was dismissed for non-prosecution under Section 256 of the Code of Criminal Procedure by the learned Metropolitan Magistrate, 16th Court, Calcutta. It has been pointed out that the present appellant happens to be the son of the complainant and the same was brought to the notice of the co-ordinate Bench of this Hon'ble Court on 26.02.2024 when the application for condonation of delay was preferred.

It is reflected from the order dated 26.02.2024 that the Hon'ble co-ordinate Bench was fully aware that the present appellant happens to be the son of the complainant and in spite of the same, allowed the prayer for condonation of delay under Section 5 of the Limitation Act in CRAN 1 of 2023. Subsequently leave was granted to prefer the appeal and consequently the appeal was admitted on 13.03.2024. Having considered the subject-matter of the case which relates to

Section 256 of the Code of Criminal Procedure wherein the Complaint Case being C/7327 of 2012 was dismissed by the learned Metropolitan Magistrate, 16th Court, Calcutta for non-appearance of the complainant, I am of the view that the case must be tried on merits. I have also taken into account the previous order wherein I find that both the parties have contributed to the delay.

It has been pointed out by Mr. Ahmed, learned advocate appearing for the respondents that there is possibility that one of the accused has expired during the pendency of the appeal. If that be so, the same be brought to the notice of the learned trial court.

It is reflected from the order-sheets that the case is fixed for evidence. Let the evidence of the case continue before the learned Metropolitan Magistrate, 16th Court, Calcutta through the present appellant being the son of the complainant whose substitution is deemed to be allowed by the order dated 26.02.2024 passed by a co-ordinate Bench of this Court. Accordingly, the order dated 30.04.2022 passed by the learned Metropolitan Magistrate, 16th Court, Calcutta in C/7327 of 2012 is set aside.

Let the lower court records be sent back to the learned trial court within a week from date.

Learned trial court would take efforts by fixing at least one date in a month so that trial of the case can be concluded within a reasonable period of time. In case, the accused persons pray for dispensation of their physical appearance before the court, the learned trial court would consider the

same by allowing the accused persons to appear virtually or through lawyer except on such dates when the proceeding cannot proceed without the physical appearance of the accused persons.

With the aforesaid observations, the appeal being CRA (SB) 45 of 2024 is allowed.

Pending connected application, if any, is consequently disposed of.

All concerned 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 with all requisite formalities.

(Tirthankar Ghosh, J.)