

15-01-2024
ct no. 13
Sl. 64
sp

C.R.R. 2046 of 2023
With
CRAN 1 of 2024

Smt. Trishita Halder
-Versus-

The State of West Bengal & Ors.

Mr. Pawan Kr. Gupta,
Mr. Kalyan Chatterjee,
Ms. Sofia Nesar

..for the petitioners

Mr. Partha Pratim Das,
Mrs. Manasi Roy

...for the State

Mr. Avik Ghatak,
Mr. Neil Basu,
Ms. A. Begum,
Mr. Sankha Biswas

...for the respondent nos. 2, 3 and 4

1. The petitioner is aggrieved by an order dated 17th May 2023 of the Additional District and Sessions Judge, Fast Track Court, Baruipur in Sessions Case No. 281 of 2022.
2. By the impugned order, the Additional District and Sessions Judge has dismissed as not pressed an earlier application of the petitioner filed before the ACJM under Section 173(8) of the Cr. P.C. filed in March, 2022. The charge sheet was filed on January 9, 2022.

3. The petitioner is the wife and complainant in respect of FIR being Baruipur Police Station Case No. 858 of 2018 under Sections 498A/406/307/34 of the IPC. The same was investigated and charge sheet was filed as indicated above.
4. The petitioner is aggrieved that Section 406 of the IPC has not been included in the charge sheet against the accused. A defective application under Section 173(8) of the Cr. P.C. was filed in March 2022 before the Magistrate.
5. The application has been found undisposed by the Additional District and Sessions Judge remaining on the file. The Magistrate, however, found no such application and sent the chargesheet for committal. As if not to be outdone by the ACJM and the ADJ. The petitioner has filed a further application under Section 173(8) of the Cr. P.C. before the Sessions Court.
6. To top the impropriety and comedy of errors, the Additional District and Sessions Judge, chose to dismiss as not press the earlier application under Section 173(8) of the Cr. P.C. of the petitioner of March, 2022 even though it was not found in the file.
7. The second application filed under Section 173(8) of the Cr. P.C. was rejected by the Sessions Judge.

8. This Court notes that the procedure adopted by the Magistrate concerned for committing the matter before the Fast Track Court, was erroneous since there was an application under Section 173(8) of the Cr. P.C. pending before the Magistrate.
9. The second application under Section 173(8) of the Cr. P.C. filed before the Sessions Judge was not maintainable after the charge sheet has been put for committal.
10. This Court notes that a pathetic state of affairs prevailing in the concerned District Court at South 24 Parganas.
11. Let a copy of this order be made available to the District Judge, South 24 Parganas.
12. With a view to put at rest, the farce, this Court, in the interest of justice, set aside the order of committal of the charge sheet No. 176 of 2022. The chargesheet is restored to the file of the concerned ACJM, Baruipur, who shall consider the petitioner's application under Section 173(8) (filed before the ADJ) of the Cr. P.C. uninfluenced by any observations made hereinabove. The order of dismissal of the same by the ADJ is set aside and same is remanded to the ACJM Baruipur for consideration.
13. The ACJM shall pass appropriate orders on the application of the petitioner under Section 173(8) of

the Cr. P.C. and dispose of the same in accordance with law, mandatorily and positively within a period of 15 days from the date of receipt of a copy of this order.

14. No adjournment whatsoever shall be given to the petitioner.
15. The ACJM may consider the application on its merits, peruse the chargesheet, the petitioner's application and all statements on record and take a decision immediately thereupon. The ACJM shall not be influenced by any observation of this Court or the ADJ.
16. All actions consequent upon the decision of the Magistrate shall be taken up with expedition and urgency by the concerned officials and/or judicial officers.
17. With the aforesaid observations, CRR 2046 of 2023 shall stand disposed of.
18. The application filed before the Additional District and Sessions Judge, Fast Track Court, Baruipur under Section 173(8) of the Cr. P.C. shall transfer to the ACJM, Baruipur.
19. In view of the above, CRAN 1 of 2024 shall also stand disposed of.

20. Urgent photostat certified copy of this judgment, if applied for, be given to the parties upon compliance of all formalities.

(Rajasekhar Mantha, J.)