

D/L 47
26.09.2024
Kausik
ct.no.35

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

CRA (SB) 112 of 2024

**Gold Silver Arts Private Limited
Versus
State of West Bengal and Anr.**

Mr. Sayan Mukherjee

...for the appellant.

Mr. M.S. Tiwari
Ms. Shweta Poddar

...for the opposite party no. 2.

Learned advocate appearing for the appellant has handed over a list of dates which reflects that the accused was absent on nine occasions and the complainant was absent on four occasions. It is further reflected from the order sheets that the relevant date on which the complainant was absent was fixed for hearing of an application/petition filed at the instance of the complainant. The hearing of the application was adjourned because of prayer for adjournment/accommodation advanced on behalf of the accused. Be that as it may at the relevant date I am of the opinion that personal or physical presence of the complainant was not required. I also find that

in the order dated 15.09.2023 and 24.11.2023 which is the subject matter of challenge no subjective satisfaction has been recorded by the learned Judicial Magistrate, 18th Court, Calcutta that the show cause notice issued by the Court was received by the complainant. The Court must ensure that whenever a notice in the form of show cause is issued the same should be served upon the complainant and there must be a subjective satisfaction that such communication is received by the complainant. In this case the same being absent I am of the view that the order dated 24.11.2023 calls for interference. Accordingly the order of acquittal so passed under Section 256 Cr.P.C. is hereby set aside.

C.R.A. (SB) 112 of 2024 is allowed. Pending applications if any are consequently disposed of.

Learned advocate for the complainant/appellant would appear before the learned Trial Court on 20.11.2024 and pray for issuance of notice upon the accused persons. Learned trial court is further directed to fix one date in a month and proceed with the case during the stage of examination of the accused under Section 251 of the Cr.P.C.

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

(Tirthankar Ghosh, J.)