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11.09.2024
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C.R.A.(S.B.) 114 of 2024

Cygnus Investments & Finance Private Limited
Versus
Shampa Sadhya and another

Mr. Anand Keshari
Ms. S. Das.

...for the appellant.

Ms. Sreyashee Biswas.

...for the State.

Report submitted by Ms. Biswas, learned advocate appearing for the State prepared by the Sub-Inspector of Police attached to Amherst Police Station be kept with the record. According to the report, the respondents namely, Shampa Sandhya and Kajari Sandhya could not be traced at 47, Raja Rammohan Roy Sarani, P.S. Amherst Police Station, Kolkata-700 009.

The present appeal has been preferred against the order dated 04.11.2023 passed by the learned Metropolitan Magistrate, 7th Court, Calcutta wherein the learned court was pleased to dismiss the complaint case and acquitted the accused persons under Section 256 of the Code of Criminal Procedure.

Records reflect that earlier on 20th January, 2023 the learned court accepted the show-cause filed by the complainant with cost of Rs.1,000/- on condition that the complainant would remain present on the next date and fixed 6th April, 2023 on the next date. On 6th April, 2023 it reflects that due to resolution of local bar, the case was adjourned; the same is a stamped order. On 6th April, 2023 the court fixed 4th November, 2023 as a next date. However, due to absent of the complainant, the case was dismissed

and the accused acquitted of the charges under Section 138 of the Negotiable Instruments Act. Records also reflect that the case was fixed for evidence and the delay was a systematic one which was contributed by the complainant as well as the accused.

Having regard to the same, I am of the view that an opportunity must be granted to the complainant to adduce evidence for proving his case. Having considered the plight of the appellant that on 6th April, 2023 because of the resolution of the local lawyers, the case was adjourned and the next date was fixed after seven months, I am of the view that the complaint case which was initiated in the year 2012 cannot all of a sudden be dismissed and the accused acquitted at the evidence stage. Consequently, the order dated 04.11.2023 passed by the learned Metropolitan Magistrate, 7th Court, Calcutta is hereby set aside.

Accordingly, CRA (SB) 114 of 2024 is allowed.

The complainant is directed to be present before the learned trial court on 5th November, 2024 when the learned court would issue process against the accused persons and resume from the stage the case was dismissed.

All 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 given to the parties, upon compliance of all requisite formalities.

(Tirthankar Ghosh, J.)

