

13.11.2024
Item. 31
Court No. 30

CRR 2370 of 2023

Ghanashyam Kumar
Vs
Samir Kumar Ray & Anr.

Mr. Tapan Datta Gupta
Mr. Parvaj Anam
Ms. Puspam Rani Jaiswara
.. For the Petitioner

Mr. Debabrata Chatterjee
Ms. Mousumi Sarkar
.... For the State.

1. The present revisional application has been preferred against an order dated 27.12.2021 passed in C. Case No. 61 of 2016 passed by the learned Judicial Magistrate, Second Court, Purulia, acquitting the accused person and discharging him from bail bond.

2. **The relevant finding in the order of the learned Magistrate under revision is as follows :-**

*“.....That the accused person is **acquitted under section 245(2) Cr.P.C. for non appearance of the complainant** before court and for non filing S/cause in compliance at the order of this court. The accused person is also discharged from the bail bond.....”*

3. Heard the learned counsels for the petitioner and the State.

4. The case of the complainant was disposed of under Section 245 (2) of the Cr.P.C. for non-appearance of the complainant.

5. Section 245 of Cr.P.C. reads as follows :-

“245. When accused shall be discharged:

(1) If, upon taking all the evidence referred to in section 244, the Magistrate considers, for reasons to be recorded, that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him.

(2) Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.”

6. Section 256 of the Cr.P.C. reads as follows :-

“256. Non-appearance or death of complainant.

(1) If the summons has been issued on complaint, and on the day appointed for the appearance of the accused, or any day subsequent thereto to which the hearing may be adjourned, the complainant does not appear, the Magistrate shall notwithstanding anything hereinbefore contained, acquit the accused, unless for some reason he thinks it proper to adjourn the hearing of the case to some other day :

Provided that where the complainant is represented by a pleader or by the officer conducting the prosecution or where the Magistrate is of opinion that the personal attendance of the complainant is not necessary, the Magistrate may dispense with his attendance and proceed with the case.

(2) The provisions of sub-section (1) shall, so far as may be, apply also to cases where the non-appearance of the complainant is due to his death.”

7. **In the present case,** the learned Magistrate has categorically noted that it was **due to the non-appearance of the complainant** that the case was being dismissed and the accused persons were acquitted.
8. Thus, it appears that the findings of the learned Magistrate in the order under revision is not in accordance with the provision of Section 245(2) of the Cr.P.C.
9. **As such, the said order suffers from inherent illegality and if allowed to remain, shall cause serious prejudice and will be an abuse of the process of law.**
10. Accordingly, the order under revision being order dated 27.12.2021 passed in C. Case No. 61 of 2016 passed by the learned Judicial Magistrate, Second Court, Purulia, acquitting the accused person and discharging him from bail bond, **is set aside.**
11. C. Case No. 61 of 2016, in the court of the learned Judicial Magistrate, Second Court, Purulia, **is restored to its own file.**
12. At this stage, the learned Magistrate is directed to proceed with the complaint case in accordance with the law and dispose of the same preferably within a period of three months on and from 25th November, 2024.

- 13. Parties are directed to appear before the trial Court on 25th November, 2024, failing which the learned magistrate shall be at liberty to proceed in accordance with law, as per the relevant provisions of Cr.P.C.**
- 14.** Learned Magistrate shall proceed in the present case on the basis of a server copy of this order.
- 15. The revisional application is accordingly disposed of.**
- 16.** There will be no order as to costs.
- 17.** All connected applications, if any, stand disposed of.
- 18.** Interim order, if any, stands vacated.
- 19.** Let a copy of the order be sent to the learned trial Court for compliance.
- 20.** Urgent Photostat certified copy of this order, if applied for, be supplied to the parties expeditiously after due compliance.

(Shampa Dutt (Paul), J.)