

02-01-2024
Subha
Item no. 59
Ct no.34

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
CRR 2522 of 2023

C. L. C Tanners Association
-versus-
State of West Bengal and Anr.

Mr. Sandipan Ganguly, Senior Advocate
Mr. Akbar Ali
Mr. Dipajan Dutt
Mr. Khalid Ali
Mr. Surajit Saha
Ms. Priyanka Sarkar

.....for the petitioner.

Mr. Rajdeep Majumder
Mr. Moyukh Mukherjee
Mr. Abhijit Singh
Mr. Sayantan Sinha

....for the Opposite party no.2.

Mr. Anwar Hossain
Mrs. Manisha Sharma

....for the State.

The subject matter of challenge relates to the order dated 13.06.2023 passed by the learned Additional Chief Judicial Magistrate, Baruipur in connection with Kolkata Leather Complex Police Station Case No. 90 of 2015 dated 15th April, 2015, wherein final report No. 5 of 2023 dated 23.03.2023 was submitted as “not charge-sheeted for want of evidence”.

The grievance of the petitioner is that the manner in which notice was served and on the next date the learned court passed an order, which under ordinary prudence has deprived the petitioner of exercising his power of filing a protest petition.

Mr. Majumder, learned advocate appearing for the opposite party no.2 vehemently objected to the contentions of Mr. Ganguly, learned senior advocate appearing on behalf of the petitioner to the effect that it was well within the knowledge of the petitioner company and in spite of the same they choose not to

participate in the proceedings because of change of circumstances they have approached the high court camouflaging a grievance by way of which they have expressed their dissatisfaction.

According to the learned advocate for the opposite party no.2 by no means service was made on 12th June, 2023 and earlier information was sent by the police authorities at the time of submission of the report under Section 173 of the Code of Criminal Procedure and the challenge to the order dated 13th June, 2023 for not participating in the proceedings is a ploy as the report of the Investigating Officer under Section 173 of the CrPC was accepted by the learned Magistrate.

Earlier a report was called for from Mr. Anwar Hossain, learned advocate appearing on behalf of the State and Mr. Hossain, learned advocate for the State has submitted a report. The report reflects that the original de facto complainant expired during the pendency of the proceedings and as such, so far as the CLC Tanners Association is concerned, which is a company and was closed, none was there to promptly take steps. On 12th June, 2023, according to Mr. Ganguly, learned senior advocate, the security personnel at the factory premises which was closed received the notice of the police authorities for participation in the proceedings which was fixed on 13th June, 2023. However, on 13th June, 2023 it was not possible for the petitioner to take steps within the working schedule of the court.

I have considered the submissions advanced by both the parties and I find that on 31st March, 2023 after the final report was received by the learned Magistrate notice was issued upon the de facto complainant for their appearance. There was no reason that the intimation would be just before the date on which the court has fixed the matter. At least the report submitted by the State and its enclosure reflects that on 12th June, 2023 service was effected upon the security personnel of the petitioner-company.

Be that as it may, I find that the final report was accepted only because of the reason that within a close proximity of 24 hours the petitioner could not take any steps.

Having regard to the same, I am of the view that the petitioner's right of filing an application under Section 173(8) of the Code of Criminal Procedure has been prejudiced.

Accordingly, I set aside the order dated 13th June, 2023 passed by the learned Additional Chief Judicial Magistrate, Baruipur in connection with G. R. Case No. 2156 of 2015 arising out of Kolkata leather Complex Police Station Case No. 90/2015 dated 15th April, 2015.

The petitioner is granted liberty to file their application under Section 173(8) of the Code of Criminal Procedure within a fortnight. Learned Magistrate will dispose of the same in accordance with law.

Needless to state that this court has not gone into the merits of the case so far as the issue relating to whether a case has been made out or not made out. It is only the right of the petitioner to file an application under Section 173(8) of the Code of Criminal Procedure which has been restored to the petitioner.

Accordingly, the present revisional application being CRR 2522 of 2023 is allowed to the limited extent.

Pending applications, if any, are consequently disposed of.

Report submitted Officer-in-Charge, Kolkata Leather Complex PS through the learned advocate for the State be kept in record.

All concerned parties are to act in terms of a copy of this order duly downloaded from the official website of this court.

[Tirthankar Ghosh, J]

