

04.10.2024

Sl.no. 14

Ct. No. 32

P.M.

C.R.R. 2447 OF 2018
Apollo Gleneagles Hospital.
- Vs -
The State of West Bengal & Anr.

Md. Shahjahan Hossain,
Ms. Sanjida Sultana,
Mr. Prithviraj Biswas,
Mr. S. Mallick
... for the petitioner
Mr. Antarik Dawn
... for opposite party No. 2.

1. Heard learned counsel appearing on behalf of the respective parties.
2. This is an application filed under Article 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 challenging the impugned order dated 23rd July, 2018 passed by the learned Additional District and Sessions Judge, Fast Track, 2nd Court, City Sessions Court, Calcutta in Criminal Revision Case No. 43 of 2018 thereby rejected the revisional application, which was arising out of the impugned order dated 11.01.2018 passed by the learned Metropolitan Magistrate, 19th Court, Calcutta in connection with Case No. CS-0034215 of 2015 filed under Section 138 of the Negotiable Instruments Act, 1981, whereby the Learned Trial Court had dismissed the complaint case for default on the ground of non-appearance on

several dates and non-filing of evidence in chief in the form of affidavit under Section 145 of the N.I. Act, 1881.

3. The learned District Judge rejected the application on the ground that the said revisional application is not maintainable against the order of dismissal for default passed under Section 256 of the CrPC.
4. Brief fact of the case is that a complaint case was filed by the complainant under Section 138 of the Negotiable Instruments Act, 1881 on 11.09.2015 through its senior manager, legal and authorized representatives and the same was registered as CS-0034215 of 2015.
5. Case was fixed on 10th January, 2013 before the learned Metropolitan Magistrate, Calcutta and after considering the prima facie case of the Petitioner, Learned Magistrate took cognizance and transferred the said case to the learned Metropolitan Magistrate, 19th Court Calcutta for its disposal. Thereafter, on 3rd December, 2015 the accused person appeared and was granted bail. Thereafter, the matter was fixed on 07.05.2016, 01.07.2016 and 07.09.2016.
6. On 07.09.2016 the learned Magistrate examined the accused under Section 251 of the Code of Criminal Procedure and, thereafter, the date was fixed for

examination of witness. But, the Petitioner failed to examine witnesses till 24th November, 2017. Learned Magistrate fixed the matter on 11.01.2018 as last chance for providing evidence in default the matter will be dismissed. In spite of giving such opportunity, the petitioner/complainant was found absent on repeated calls. Later at 11.30 a.m., the learned Magistrate dismissed the case for default when it was found from the record that the complainant filed absent petitions on five earlier days fixed for evidence and the conduct of the complainant shows reluctant to proceed with the case further.

7. Petitioner herein contended that a petition was filed after passing of the dismissal order on the same date for consideration of affidavit but learned Magistrate did not allow and the same was dismissed on technical ground.
8. Feeling aggrieved and dissatisfied by the said impugned order of dismissal, filed revisional application before the learned Session Judge but the same was summarily rejected.
9. Upon perusal of the impugned orders passed by both the courts below, this court does not find any sufficient reasons to interfere with the same because

dismissal of the complaint in default under section 256 of the CrPC entails the acquittal of the accused. Once an accused has been acquitted of the offence, the law provides a remedy by way of an appeal against the order of acquittal. Once a remedy by way of appeal is available to the petitioner under Section 378 (4) of the CrPC, on failure of the Petitioner to avail of such a remedy, this court should not exercise the inherent powers for interfering with the impugned order either Section 482 of the CrPC or under Article 227 of the Constitution of India.

10. Accordingly, this court finds the application has devoid of merits. **CRR 2447 of 2018** is, thus, dismissed. Connected applications, if any, are also thus disposed of.

11. Let a copy of this order be communicated to the learned Trial Court for information.

12. Urgent photostat certified copies of this order may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities

(Ajay Kumar Gupta, J.)

