

02-05-2024
Subha
Item no. 18
Ct no.34

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction

CRR 3537 of 2023
CRAN 1 of 2024

Sk. Habibur Rahaman

-vs-

The State of W.B & Ors.

Mr. Sandipan Das
Mr. Badrul Karim
Ms. Priyanka Paul
Ms. Indrani Roy
Mr. Sarajit Roy

.....for the petitioner.

Mr. Imran Ali
Ms. Trina Mitra

...for the State.

Affidavit of service so filed be kept with the record.

Petitioner is aggrieved by the fact that the three accused persons namely, Nitai Shaw, Jagadish Bera, Prasanta Maity were discharged from the case being Debra P. S. Case No. 265 of 2021 dated 24-05-2021 yet the learned CJM, Paschim Medinipur without affording any opportunity or issuing any notice accepted the report under Section 173 of the Code of Criminal Procedure filed by the Investigating Officer and released the aforesaid three persons who were named in the FIR.

The de facto complainant/petitioner came to know regarding the same when he was called as a witness by the learned Judicial Magistrate, 5th court, Paschim Medinipur.

Having considered the order dated 11-03-2022, I am of the view that the learned CJM, Paschim Medinipur while considering the report under Section 173 of the Code of Criminal Procedure and

accepting the discharge of the accused persons should have granted opportunity to the present petitioner. Petitioner after having knowledge regarding the same preferred an application before the learned Judicial Magistrate, 5th court, Paschim Medinipur and vide order dated 09-08-2023 the same was dismissed.

Having considered the fact that a right of the de facto complainant /petitioner who initiated the proceeding was violated when the accused persons were released/discharged by the learned CJM, Paschim Medinipur and the nature of the evidence which is required to be substantiated, I am of the view that an investigation is required. Accordingly, the order dated 09-08-2023 thereby refusing the prayer of the petitioner for granting further investigation is set aside. The learned Judicial Magistrate, 5th court, Paschim Medinipur is directed that the Investigating Officer of the case would conduct further investigation and submit his report within 90 days from the date of communication of the order assigning the reasons as to whether the three accused persons who were discharged are required on collection of further evidence after examining the de facto complainant and the witnesses if any. Till then the trial of the case will not proceed. The learned trial court will next fix a date in the month of November, 2024. The Investigating Officer will reassess the further materials so collected in course of investigation and give his opinion at the time of submitting of supplementary report under Section 173 of the Code of Criminal Procedure.

With the aforesaid observations, the revisional application being CRR 3537 of 2023 along with CRAN 1 of 2024 is disposed of.

Pending any other applications, if any, are consequently

disposed of.

Case diary be returned to the learned advocate for the State.

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]