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18.07
2024
Ct. No. 237

C.R.R. 4412 of 2022
With
IA No. C.R.A.N. 2 of 2024.
Kalipada Das & Anr.
Vs.
The State of West Bengal & Anr.

Mr. Mrityunjoy Chatterjee
Mr. Salil Kumar Maiti

...For the Petitioner

Mr. Avishek Sinha
Ms. Mamta Jana

...For the State

Affidavit-of-service filed on behalf of the petitioners is taken on record. In spite of service, private opposite party is not represented.

Being aggrieved by and dis-satisfied with the order dated 15th November, 2022 passed by the learned Court of Judicial Magistrate, Haldia, present application has been preferred contending that the case was initially registered under Section 447/323/354/379/34 of the Indian Penal Code read with Section 3(I)(x) of the Scheduled Case and Scheduled Tribes (Prevention of Atrocities) Act, 1989. On the basis of said FIR, investigation started, which culminated into a charge sheet but the charge sheet was submitted under Section 341/323/34 of the Indian Penal Code against both the petitioners herein. Accordingly charge was framed and trial commenced. When the examination-in-chief of PW 1 held in part, the de facto complainant made a prayer before the Trial Court, under Section 323 of the Criminal Procedure Code contending that the statements made by the PW 1 in the Examination-in-Chief clearly reveals that the case is exclusively triable by a Special Court

constituted under the SC and ST (Prevention of Atrocities) Act. Accordingly, she prayed for committed the case record before the said Court. The accused persons filed written objection against the said application with a prayer for rejection of the said application.

The main grievance ventilated in the present application by the petitioner is that he did not get any opportunity to cross-examine the witnesses and without assessing the evidentiary value of such evidence which can only be tested during cross-examination, the Court below hurriedly committed the same before the Court, constituted under the SC and ST (Prevention of Atrocities) Act, 1989.

I have perused the order impugned which reveals that the Court below was of the opinion that if cross-examination is allowed to the defence, that would be nothing but adjudging the spirit of the letters of law as envisaged under the Act of 1989, which the Court below cannot do, because of its not having jurisdiction and the same lies exclusively in the Court of learned Special Judge at Tamluk.

Section 323 of the Criminal Procedure Code states that if during trial, it appears to the Court concerned, at any stage of proceeding before signing judgment that the case is one which ought to be tried by the Court of Session, he shall commit it to that Court.

There is no quarrel with the proposition of law that Magistrate on recording a part of evidence, even before cross-examination begins, he can commit the case to Sessions Judge, if it appears to him that the

case ought to be tried by Court of Sessions. From the order impugned, I do not find that learned Magistrate made any observation that from the part of evidence recorded so far, it appears to him that the case ought to be tried by Court of Sessions. On the contrary, merely because an application under Section 323 of the Criminal Procedure Code has been preferred, he pre-supposed that if he goes on with further examination of the witness, it would amount to exceeding his jurisdiction.

In such view of the matter, the present application, being CRR 4412 of 2022 is hereby disposed with a direction upon the Court below to rehear the application of the de facto complainant under Section 323 of the Criminal Procedure Code preferably within a period of four weeks from the date of communication of the order, after giving opportunity to both parties to contest and to pass an order afresh after giving reasons in support of such order.

The order dated 15th November, 2022 is thus set aside.

In view of the aforesaid disposal of C.R.R. 4412 of 2022, consequently the application, being IA No. CRAN 2 of 2024 is also disposed of.

(Ajoy Kumar Mukherjee, J.)