

Form No. J.(2)
Item No. 5/ML

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

HEARD ON: 05.08.2024

DELIVERED ON: 05.08.2024

**CORAM:
THE HON'BLE MR. CHIEF JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA**

**M.A.T. 2276 of 2023
With
I.A. No. CAN 1 of 2024
With
I.A. No. CAN 2 of 2024
With
I.A. No. CAN 3 of 2024**

**Subir Majhi
Vs.
Smt. Rajlakshmi Chaudhuri & Ors.**

Appearance:-

**Mr. Dinabandhu Chowdhury
Mr. Amal Kr. Saha
Ms. Iresh Paul
Ms. Akansha Banerjee**

.....for the appellant

**Mr. Ansar Mandal
Mr. T.J. Mandal**

.....for the State

JUDGMENT

(Judgment of the Court was delivered by T.S. SIVAGNANAM, C.J.)

1. This appeal has been filed by a third-party, one Subir Majhi, who is aggrieved by the order and direction issued in W.P.A. 744 of 2023 dated 24th January, 2023 and the subsequent order dated 28th February, 2023.
2. It appears that the learned advocate for the appellant attempted service of notice on the learned advocate, who appeared for the 1st respondent/writ petitioner, who refused to receive. The notice sent to the 1st respondent/writ petitioner by post has returned with the postal endorsement "Addressee Left without Instruction".
3. Thus, it appears that there is a deliberate attempt to evade service. In any event, since certain observations made in the order passed in the writ petition directly impinge upon the rights of the appellant, we deem it appropriate to grant leave to the appellant to file the appeal. Consequently, the delay in filing the appeal is condoned. The applications being I.A. No. CAN 1 of 2024 and I.A. No. CAN 2 of 2024 are allowed.
4. The preliminary question, which has to be considered is whether a direction could have been issued in a writ petition filed by the 1st respondent herein, wherein the main prayer was to transfer all the records pertaining to Bolpur Women Police Station Case No. 63 of 2022 to an independent investigating agency.
5. The learned writ Court has not granted such a prayer. In the impugned order, we find that the learned writ Court has observed that despite service of notice, the private respondents are not represented on the said date i.e. 24th January, 2023.
6. To be noted that no private respondent was impleaded in the writ petition; rather, the present appellant ought to have been impleaded in the writ

petition as a respondent since the F.I.R., which was registered as Case No. 385 of 2022 by the Bolpur Women Police Station was based on a complaint given by the appellant against the writ petitioner.

7. The learned writ Court in its order dated 24th January, 2023 while not granting relief sought for in the writ petition, directed the investigation to continue but however, made an observation that no coercive step shall be taken against the respondent/writ petitioner. In our view, such observation was beyond the scope of the writ petition since the police, who investigate the case have got sufficient powers under the provisions of the relevant statute to proceed in accordance with law. The writ petition subsequently, stood disposed of on 28th February, 2023.
8. The learned Government counsel, on instruction submitted that the investigation is complete and charge-sheet has also been led before the Special Court.
9. In such circumstances, the trial of the case should not be in any manner affected on account of the observations made by the learned writ Court in its orders dated 24th January, 2023 and 28th February, 2023. Since the charge-sheet has already been led, it will be well open to the respondent/writ petitioner to take all defences in the pending criminal cases.
10. Accordingly, the appeal is allowed and the observations made by the learned writ Court in its orders dated 24th January, 2023 and 28th February, 2023 shall stand vacated and the trial shall proceed in accordance with law.
I.A. No. CAN 3 of 2024 stands disposed of.
11. No costs.

12. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

I agree.

(HIRANMAY BHATTACHARYYA, J.)

Pallab/Krishnendu AR(Ct.)