

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION**

Present:

The Hon'ble Justice Tirthankar Ghosh

C.R.A(SB) 176 of 2022

***Shri Kishan Kandoi
versus
Mr. Sanjay Saha.***

For the Appellants : Mr. Anirban Mittra
Mr. Amit Halder
Mr. Amit Roy
Ms. Madhumita Sadhukhan

Heard On : 30-07-2024 & 07.08.2024.

Judgement On : 30-08-2024.

Tirthankar Ghosh, J. :

The order dated 30th July, 2024 reflects that the respondent was represented. Initially, none represented the respondent, so the assistance of the State was sought for and subsequently the officer-in-charge of Muchipara PS effected service, pursuant to which Mr. Anirban Majumder and Mr. Abhishek Banerjee, learned advocates entered appearance. Repeatedly, this matter has been called thereafter, but there is no participation of the respondent thereafter.

The subject matter of the present appeal relates to dismissal of the complaint and acquittal of the accused under Section 256 of the Code of Criminal Procedure. Record reflects that the complaint case is under the

provisions of Section 138 of the N. I. Act being CS 52048 of 2021, wherein the petition of complaint was filed on 2nd September, 2021. Learned Chief Metropolitan Magistrate, Calcutta was pleased to take cognizance of the offence and transferred the case to the learned Metropolitan Magistrate, 8th Court, Calcutta. On 28-02-2022, learned Metropolitan Magistrate, 8th Court, Calcutta was pleased to issue process after considering the affidavit under Section 145 of the N. I. Act along with the documents and the oral deposition of the complainant. Subsequently, the record reflects that there were two dates i.e., 05-04-2022 and 19-04-2022. The accused did not appear after the process was issued and the learned Magistrate at short interval of 15 days was pleased to fix dates after issuing show cause and dismissed the complaint.

Having considered that the presence of the complainant was not called for and the records do not reflect that the complainant did not deposit the requisites for appearance of the accused persons, I am of the view that it was incumbent upon the learned Magistrate to first ensure regarding the appearance of the accused and thereafter consider the issue relating to the non-appearance of the complainant. Further, no subjective satisfaction is recorded as to whether the show cause which was issued was at all received by the complainant or not.

Under such circumstances, I am of the opinion that it was an unnecessary step taken by the learned Metropolitan Magistrate, 8th Court, Calcutta to dispose of by way of dismissing the complaint and acquitting the accused.

Considering the same, the order dated 19-04-2022 calls for interference by this court and the same is as such set aside. The learned Magistrate is directed to proceed by issuing fresh notice upon the accused persons in connection with CS 52048 of 2021.

Thus, the appeal being CRA (SB) 176 of 2022 is allowed.

The complainant is directed to appear before the learned Magistrate, 8th Court, Calcutta on 17th September, 2024. It would be the discretion of the learned Magistrate to proceed with the case from the stage of issuance of process as was passed in the order dated 28th February, 2022.

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

Pending connected application, if any, is consequently disposed of.

All concerned parties shall act on the server copy of this judgement duly downloaded from the official *website* of this Court.

Urgent photostat certified copy of this judgement, if applied for, be given to the parties upon compliance with all requisite formalities.

(Tirthankar Ghosh, J.)