

Item No.1
25.08.2025
Court-35
(Suman).

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

C.R.R.168 of 2022
With
CRAN 9 of 2024
CRAN 10 of 2025

**Tantia Construction Ltd.
Versus
M/s D.D. Computers Private Limited**

Mr. Swatarup Banerjee,
Mr. Avishek Guha,
Mr. Sk. Sariful Haque,
Mr. Akansha Majumder,
Mr. Adipta Kr. Pandit
...for the Petitioner.

The present application being CRAN 9 of 2024 has been taken out with a prayer for recalling the order dated June 20, 2024 passed in connection with Complaint Case being CC-96539 of 2016.

By the said order dated June 20, 2024, this Court on submissions made from the bar that the complaint case has reached the stage of Section 313 of the Code of Criminal Procedure before the Learned Metropolitan Magistrate /Judicial Magistrate, 6th Court, Calcutta decided to dispose of C.R.R. 168 of 2022, granting liberty to the petitioner to present the certified copies of the orders before the Learned Magistrate through a representative of the company, bringing it to the notice of the Learned Trial Court regarding the orders

passed by the National Company Law Tribunal Kolkata Bench, as also the settled proposition of law.

By way of the present application being CRAN 9 of 2024, learned advocate appearing on behalf of the applicant/petitioner has contended that inadvertently it was not mentioned that in the complaint case the proceeding before the Learned Metropolitan Magistrate, 6th Court Calcutta (presently Judicial Magistrate, 6th Court, Calcutta) did not reach the stage of Section 313 of Code of Criminal Procedure. To that effect, certified copies of the order of the Learned Magistrate has been enclosed and attention of the Court was drawn to the certified copy of the order dated 22.08.2024 wherein Learned Metropolitan Magistrate/Judicial Magistrate, 6th Court, Calcutta directed for recording of evidence on 28.11.2024.

Having considered that the records of the complaint case being CNS - 96539 of 2016 reflect that the case did not reach the stage of Section 313 of the Code of Criminal Procedure, i.e., the evidence of the prosecution was not completed.

I am of the view that the orders passed in similar revisional applications should be followed in this case.

In fact, in CRR 166 of 2022, in similar set of circumstances, this Court wherein the evidence did not

commence passed a separate order thereby allowing the revisional application.

Having regard to the certified copy which has been subsequently produced before this Court by way of an application praying for recalling of the order dated 28th June, 2024. I am of the view that the said order is required to be recalled.

Accordingly, CRAN 9 of 2024 is allowed.

As such, the present revisional application be restored to its original file and number. Having regard to the stage of the case and the law settled by the Hon'ble Supreme Court, in P. Mohanraj & Ors. Vs. Shah Brothers Ispat Private Limited reported in (2021) 6 SCC 258 and Ajay Kumar Radheshyam Goenka Vs. Tourism Finance Corporation of India Limited reported in 2023 SCC OnLine SC 266 and referring to the relevant paragraphs, particularly the observations made in Ajay Kumar Radheshyam Goenka (supra) which is as follows:

“108. Thus, the upshot of all the decisions referred to above is where the proceedings under Section 138 of the NI Act had already commenced with the Magistrate taking cognizance upon the complaint and during the pendency, the company gets dissolved, the signatories/Directors cannot escape from their penal liability under Section 138 of the NI Act by citing its dissolution. What is dissolved, is only the company, not the personal penal liability of the accused covered under Section 141 of the NI Act.

109.1. After passing of the resolution plan under Section 31 IBC by the adjudicating authority & in the light of the provisions of Section 32-A IBC, the criminal proceedings under Section 138 of the NI Act will stand terminated only in relation to the corporate debtor if the same is taken over by a new management.”

I am of the view that so far as the present petitioner or the corporate debtor before this Court is concerned, as the same has been taken over by a new management, the proceedings against the petitioner/accused company in connection with Complaint Case No. CNS - 96539 of 2016 should be quashed.

Consequently, C.R.R. 168 of 2022 is allowed.

Connected applications, if any, are consequently disposed of.

The interim order earlier so passed is made absolute.

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

Urgent Photostat certified copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Tirthankar Ghosh, J.)

