

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS.

CRR 308 OF 2025

RITWIK BISWAS

VS

THE STATE OF WEST BENGAL & ORS.

For the Petitioner : Mr. Raghunath Chakraborty, Adv.
Ms. Nandini Chatterjee, Adv.
Ms. Mohana Das, Adv.

For the Opposite Party

No. 2 : Mr. Smarajit Basu, Adv.

Last heard on : 24.09.2025

Judgement on : 24.09.2025

CHAITALI CHATTERJEE DAS, J. :-

- 1.** This revisional application is filed under Section 438/442 of BNSS 2023 read with Section 528 of BNSS 2023 for quashing and or setting aside the order dated 29.11.24 for not considering the prayer for restoration and upholding the order whereby the Learned Judicial Magistrate, 2nd Court, Barasat, North 24 Parganas passed an order dismissed for default in compliant case No. 938 of 2020 under Section 500/195/120B of the Indian Penal Code.
- 2.** The case of the petitioner is that he is a Professor of Department of History, University of Calcutta and she and her husband were falsely implicated in Baguihati Police Station Case No. 237/18 dated 11.06.2018 where none of

them were present at the place of occurrence or at the time of occurrence as alleged in the written complaint lodged by the de facto complainant. It is their further case that the charge-sheet for a false prosecution case against them was made at the behest of the Opposite Party No. 2 in collusion and connivance with one Krishnendu Roy and promoter-cum-Developer Swagatam Saha and their associate Bumba in order to malign and defame the petitioner and her husband. The Learned Chief Judicial Magistrate, 24 Parganas, North at Barasat vide order dated 25.8.2020 took cognizance of the matter and the record was transferred to the Learned Judicial Magistrate, 2nd Court, Barasat, 24 Parganas, North, where on 23.3.21 the petitioner was examined on S/A under Section 200 of the Code of Criminal Procedure 1973 and she also tendered her written Examination-In-Chief supported by an affidavit.

3. Furthermore, the Opposite Party No. 2 was arrested on the strength of warrant of arrest issued on 06.02.2023 by Baguihati Police Station and enlarged on bail on 20.02.2023 passed by Learned Judicial Magistrate, 2nd Court, Barasat, North 24 Parganas. It is their further case that on 15.05.2023 the next date was fixed by the Learned Court on 28.09.2023 for evidence but the said was declared is holiday none appeared before the Learned Court and the conducting advocate of the petitioner read the next date as “07.08.2024” as was found from the daily cause list register. Therefore, on 7th of March 2024 the petitioner could not take steps and a show cause was issued by the Learned Magistrate against the petitioner as to why the case was not to be dismissed for default and the next date was fixed on 22.7.24. On that date the petitioner was present without taking steps and the Learned Court dismissed the matter for default. The Learned Advocate representing the petitioner

submits that as soon as the order of dismissal to take note of the date by mistake on the part of the conducting advocate of the petitioner came to his knowledge he immediately informed the petitioner on 30.07.2024 and an application praying for restoration was filed by the petitioner before the Learned judicial Magistrate , 2nd Court Barasat, North 24 Parganas , but the said application was rejected by the Learned Magistrate vide his order dated 29.11.2024 Being aggrieved thereby this revisional application has been filed.

4. The Learned Advocate representing the petitioner strenuously argued that the petitioner could not appear in Court on 7.3.2024 as in the daily cause list from the Court it looked like 7.8.24 and upon inspection as soon as it was defected the petitioner, preferred the restoration application and there was no intentional delay and or wilful laches on the part of the petitioner or his advocate. The Learned Advocate when in order to strive the next date which was previously scheduled on 28.9.23 was informed that on 7.8.24 the petitioner was to take steps and on 30.07.2024 he came to know about the order of dismissal on 22.7.24. Such prayer for setting aside the order of dismissal dated 22.7.24 was filed and there was no fault on his part. So one entire circumstances arose on account of mistaken entry in the Register for which the petitioner is worst sufferer.

5. The Learned Advocate representing on behalf of the Opposite Party No. 2 on the other hand raised objection and submits that in the CIS orders are uploaded and the date was given as 7th of March 2024 which could have been strived by the petitioner. Secondly even if it is considered that there was a mistake in reading the date as 07.08.24 instead of 7th of March, 2024 no explanation has been given as to why they did not appear before the Court on

22.7.24 and or as to why the conducting advocate went to note the next date on 30th July, 2024 when according to their own case and the date was taken note on 17th August, 2024. It is submitted that in order to delay and drag the proceeding this instant case has been filed for which there is no merit in this revisional application for which it ought to have been dismissed. It is further argued the Learned Court rightly rejected the application filed for recalling of the order of '*dismiss for default*' since the Court become functus officio after passing such order or dismissal. It is further argued that since the case has been dismissed the petitioner instead of filing this revisional application ought to have been filed an appeal in terms of Section 262 of Cr.Pc as the present Opposite Party has been acquitted by virtue of such order of dismissal. That apart there was delay in filing the restoration application which was filed on 30th of July.2024 when the order of dismissal was passed on 22nd of July, 2024.

- 6.** Heard the submission of both the Learned Advocate. From the submissions advanced by both the Learned Advocates and going through the materials on record, prima facie it can be seen that the complaint was lodged by the present petitioner under Section 200 of Code of Criminal Procedure for commission of offence under Section 500/195/120B of the Indian Penal Code against the present petitioner No. 2 alleging inter alia that Developer , she and her husband purchased two flats from their developer Swagatam Saha ,the sole proprietor of M/s Sagar Creation. The developer made gross deviation from the original plan of the premises sanctioned on 9.3.2004 on the basis of which the flats were purchased by the petitioner. Furthermore the complainant and her husband raised protest against the developer for raising such

unauthorised construction in each block of the premises destroying internal waterbody without providing any firefighting arrangement to converting car parking space into shops etc. , this and filed a Writ petition before the Hon'ble High Court on the issue of this unauthorised construction. A co-ordinate bench of this Court passed an order of injunction dated 20th February against creation of any 3rd party interest by the developer in the premises but the developer put all sorts of pressure upon the complainant by filing criminal case with frivolous allegation against complainant and her family members.

7. There is evil nexus among the developer Sri Swagatgam Saha, Krishnendu Roy and Sri Partha Roy and Smt Soma Roy they hatched the obnoxious conspiracy as a result the present petitioner and her husband being the senior citizen are the worst sufferer. The Opposite Party No. 2 also lodged a complaint on 11th of June, 2018 and an FIR No. 237 of 18 under Section 341/323/307/506/34 IPC was registered against the complainant and her husband and they were arrested on 17th of June 2018 and put into judicial custody and subsequently released on bail after two days of their arrest. It is apparent from the content of such petition that several litigations are pending between the complainant, her husband Rajat Dey and the proprietor-cum-developer on account of some unauthorised construction. It further transpires that prayed before this court to take cognizance and issue process against the accused person that is Opposite Party No. 2.

8. On 28th February, 2023 the S.R. received but accused person did not turn up and warrant of arrest was issued fixing 15.05.2023 for ER of WA The annexure P4 dated 28th of September, 2023 reveals that the instant which was registered as complaint case of 938 of 2020 was fixed for taking evidence and from the

said document, it is clearly visible that the date can be read as 7/8/2024. On perusal of the order dated 22.7.24, it is seen that that date was fixed for filing show cause by the complainant and complainant was not present and no show cause was filed accordingly the Learned Court passed the order of dismissal of the case for default and noting the same in T.R.

9. According to the case of the petitioner the date was visible as 7th of August 2004 when originally the date was given as 7th of March 2024. The document which has been filed with this petition and has not been denied by the Learned Advocate of the Opposite Party that is annexure P4 clearly reveals the date as 7.8.24 and in terms of the CIS the date was 7th of March 2024. Therefore the possibility of reading it as 7th of August 2024 cannot be ruled out and thereby non-appearance on the next date fixed that is on 7th of March 2024 by the complainant is absolutely justified. On 7th of March, 24 on account of such non-appearance the court passed an order of show cause against the complainant and as a consequence of that mistaken date on 22nd July, 24 also nobody appeared to represent the complainant.

10. The Learned Court considered the fact that the complainant remained absent and no show cause was filed and passed such order of dismissal but nowhere it was recorded that on account of such dismissal the accused person in the case is acquitted. In the decision as relied upon by the Learned Opposite Party reported in ***Vinaykumar Ashokkumar Maliwal v Ramesh Kishanlal Saboo***¹ it can be found that in the said case under Section 138 of N.I. Act was posted for hearing of 24th of February, 2003 and when the criminal case was called out the complainant was found absent and hence the order of dismissal

¹ 2007 SCC Online Bom 1108

was passed. The Learned CJM discharged the accused /respondent for want of prosecution on the same day. In later part the Advocate for the complainant submitted an application to recall the order of dismissal on the ground stated there which was objected by the respondent on the ground that the criminal court had no power to restore the complaint case by reviewing its own order of dismissal.

11. The said application was rejected by the Learned Court against which a criminal revisional application was filed which was also dismissed considering that revisional petition are not maintainable against the order of dismissal of the complainant under Section 256 of Cr.Pc. which subsequently travelled up to High court and the Court observed therein that on three occasions the complainant was absent and specific order was passed for dismissal the complaint due to absent of the complainant. It was further observed that application under Section 482 of the Cr.Pc is not maintainable because appellate remedy is available and the applicant complainant must show sufficient ground to entertain the appeal against the order of acquittal.

12. Further relied upon the decision reported in ***Pankaj Kumar v. State of Maharashtra and others***² where the power of Section 482 Cr.Pc or Article 227 of the Constitution was discussed and it was observed that the power are very wide but this should be exercised in appropriate cases, ex debito justitiae to do real and substantial justice for the administration of which alone the Court exists. The inherent powers do not confer an arbitrary jurisdiction on the High Court to act according to whim of caprice.

² 2008 16 SCC 117

13. In the instant case, it can be found that because of a mistake of taking note of the date fixed for appearance the step could not be taken by the petitioner as a result none could appear on the subsequent dates and the Learned Magistrate passed the order of dismissal of the case on default. The restoration application was also filed only within 7 days from the date of such dismissal and therefore there was no delay in preferring the restoration application. The view expressed in the decision of the High Court in Vinaykumar Ashok Kumar Maliwal that *"I am of the opinion that the Magistrate has no power to review his own order of dismissal .The complaint could have filed an appeal against the order of acquittal and such appeal could be entertained only with the leave of the court"* The Hon'ble court further observed that in view of the specific remedy available provided by law Section 482 Cr.Pc cannot be invoked'.

14. An order acquittal can also be recorded by the magistrate under Section 256, Cr. PC, without considering the evidence on record .Section 256 of the Cr. PC reads as follows:

Non-appearance or death of complainant-(1) If the summons has been issued on complaint, and on the day appointed for the appearance of the accused, or any day subsequent thereto to which the hearing may be adjourned, the complainant does not appear, the Magistrate shall, notwithstanding anything hereinbefore contained, acquit the accused, unless for some reason he thinks it proper to adjourn the hearing of the case to some other day:

Provided that where the complainant is represented by a pleader or by the officer conducting the prosecution or where the Magistrate is of opinion that the personal

attendance of the complainant is not necessary, the Magistrate may dispense with his attendance and proceed with the case. (2) The provisions of sub-section (1) shall, so far as may be, apply also to cases where the non-appearance of the complainant is due to his death”.

So it is clear that in case the date was fixed for appearance of the complainant and none appears the Magistrate may acquit even without taking evidence.

15. In the decision of the Hon’ble Supreme Court in ***Maj.Genl, A.S Gaurya vs S.N Thakur***³ it was observed ‘so far the accused is concerned dismissal of a complaint for non-appearance of the complaint or his discharge or acquittal on the same ground is a final order and in absence of any specific provision in a Code, a Magistrate cannot exercise any inherent jurisdiction ,to restore the case.”

16. It is pertinent to mention herein that the Magistrate has not expressly noted the order of acquittal in the order but the consequence of passing of the order of dismissal amounts to acquittal of the of the accused but not on merit or after assessing evidence . In absence of any specific provision for restoration the Learned Magistrate rightly refused the prayer for restoration and the appellate court also did not find any illegality therein. Therefore this court do not find any illegality in the order passed by the learned court as the Learned Court was right in passing such order refusing to restore in absence of any specific provision to that extent .

17. However the admitted fact is that the confusion started on the basis of the updated date as on 7/8/24 in place of 7/3/24 by the learned court and hence

³ (1986) 2 SCC 709

the petitioner is at liberty to move the appropriate Court for ventilating their grievances for having their available legal remedy.

18. Accordingly this revisional application stands dismissed.

19. Urgent certified copy if applied by any of the parties to be supplied subject to observance of all formalities.

(CHAITALI CHATTERJEE DAS, J.)

