

06.01.2025
M/L No. 17
Ct. No. 30
SM

CRR 237 of 2021
With
IA No: CRAN/1/2021

Pankaj Kumar Goel
VS.
State of West Bengal & Anr.

Mr. Sourav Chatterjee, Sr. Adv.
Mr. Satadru Lahiri
Mr. A.P. Agarwala
Mr. Safdar Azam
Mr. Syed Wasin Farrque
Mr. Jyotirmoy Talukder
.....for the petitioner

Affidavit-of-service filed be kept with the record. It shows that service could not be effected and the item was returned to the sender as “no such person could be found at the address.”

In Re. IA No. CRAN 1 of 2021

The grounds so assigned in the application under Section 5 for condonation of delay are found to be just and sufficient.

Accordingly, the delay of 28 days which has occurred in preferring the revisional application is hereby condoned in the interest of justice.

IA No. CRAN 1 of 2021 stands allowed.

C.R.R. 237 of 2021

This revisional application has been preferred on the ground that after issuance of process the accused appeared before the Court in a case under Sections 138/141 of the N.L. Act and, thereafter, filed an application for discharge and/or non-maintainability. Learned Magistrate on consideration of the same was of the opinion that the said Court was without any

jurisdiction to consider an application for discharge/non maintainability once the process has been issued. The opposite party no.2 preferred a revisional application before the Learned Sessions Judge being Criminal Revision No. 125 of 2018. The Learned Additional Sessions Judge, 3th Court, Howrah by an order dated 10.09.2020 was pleased to allow the said revisional application and set aside the order dated 19.09.2018 passed in Complaint Case No. 173C of 2017 by the learned Judicial Magistrate, 6 Court, Howrah.

Learned advocate appearing for the petitioner submits that the learned Sessions Judge while exercising its jurisdiction exceeded its authority as well as the settled proposition of law that once the issuance of process is to be challenged the same is to be by way of Section 482 of the Code of Criminal Procedure as has been held by the Hon'ble Supreme Court in the case of **Adalat Prasad Vs. Rooplal Jindal & Ors.** reported in **(2004) 7 SCC 338** and in the case of **Subramaniam Sethuraman Vs. State of Maharashtra & Anr. reported in (2004) 13 SCC 324.**

In view of the accepted proposition of law, I am of the opinion that the nature of the power exercised by the learned Sessions Judge while arriving at his finding is by way of exercising power under Section 482 of the Code of Criminal Procedure which the learned Sessions Court is not authorized while exercising his revisional jurisdiction. The complainant's case as made out in Paragraphs 2, 3, 4, 5 and 6 in the petition of complaint, do prima facie make out a case for trial and on merits also, the conclusion

arrived at by the learned Sessions Court is not in accordance with law.

Accordingly, the order dated 10th September, 2020 passed by the learned Additional Sessions Judge, 3 Court, Howrah in Criminal Revision No.125 of 2018 is hereby set aside. Learned Judicial Magistrate, 6" Court, Howrah is directed to issue notice upon the opposite party no.2/accused no.4 and proceed with the trial of the case.

Thus, C.R.R. 237 of 2021 is allowed.

Pending applications, if any, are consequently disposed of.

All parties are directed to act on the server copy of this order downloaded from the official website of this Hon'ble Court.

[Shampa Dutt (Paul), J.]