

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

C.R.R. 2575 of 2018
With
CRAN 2 of 2019 (Old CRAN 2255 of 2019)

Sk. Hafizul Haque & Ors.
Versus
The State of West Bengal & Another

For the Petitioners : Md. Nurezaman, Adv.
Mr. Somen Bose, Adv.

For the Opposite Party No. 2 : Mr. Sandip Kr. Bhattacharya, Adv.
Mr. Dipta Dipak Banerjee, Adv.

Heard on : 18.11.2024

Judgment on : 22.01.2025

Ajay Kumar Gupta, J:

1. This instant application has been filed by the petitioners under Section 482 read with Section 401 of the Code of Criminal Procedure, 1973 challenging the legality, propriety and correctness of the Impugned Order dated 18.05.2018 passed by the Learned Additional District and Sessions Judge, Bench-II of City Sessions Court, Bichar Bhawan, Calcutta in Criminal Revision No. 111 of 2017 arising out of an Order dated 04.02.2017 passed by the Learned 8th Metropolitan Magistrate, Calcutta in Case No. C/15865 of 2007 under Sections 417/418/419/420/465/469/471 of the Indian Penal Code, 1860.

2. By the said judgment, the Learned Additional District & Sessions Judge dismissed the Criminal Revisional application and affirmed the order dated 4th February, 2017 passed by the Learned Metropolitan Magistrate, 8th Court at Calcutta. The Learned Magistrate vide order dated 4th February, 2017 rejected the prayer of the petitioners with a liberty to the petitioners to proceed with the case after complying with the provision as laid down in Section 256 read with Section 302 of the Cr.PC.

3. The brief facts, leading to filing of this Criminal Revisional application, are that one complaint case was initially filed by Sk. Ataul Haque through his Constituted Attorney, Sk. Sirajul Haque for commission of offences u/s 417/418/419/420/465/469/471 of IPC against Md. Jamil Ahmed, Opposite Party No. 2 herein before Learned Chief Metropolitan Magistrate, Calcutta.

4. After considering the said petition of complaint, the Learned Magistrate took cognizance u/s 417/418/419/420/465/469/471 of IPC against Md. Jamil Ahmed and transferred the said case before Learned Metropolitan Magistrate, 8th Court, Calcutta for inquiry, trial and disposal.

5. Thereafter, the Learned Metropolitan Magistrate, 8th Court has made an inquiry under Section 200 of CrPC and upon considering S/A, a prima facie case found against the accused. A summon was issued against the accused/opposite party no. 2 herein. Thereafter, the accused appeared and obtained bail from the Learned Court. The matter was fixed for evidence.

6. In the meantime, due to old age about 80 years and serious health issue of Sk. Ataul Haque, an application u/s 410 of CrPC before Ld. C.M.M., Calcutta was filed praying for transferring the case to any other Court at the ground floor of the said building for his easy

convenience for appearing in the Court. A notice was served upon the accused but he did not appear on the date of hearing. Therefore, the said petition was heard and the prayer was allowed vide order dated 30.08.2010 and directed to transfer the proceedings to Learned Metropolitan Magistrate, 13th Court, Calcutta situated on the ground floor for disposal.

7. Soon after, the accused/opposite party no. 2 challenged the said impugned order dated 30.08.2010 after being dissatisfied before Learned Chief Judge, City Sessions Court, Calcutta by filing the Revisional Application being No. 307 of 2010 and the same was transferred to the then Ld. Judge, Fast Track, 3rd Court, Calcutta for further hearing.

8. During pendency of the said revisional application, the original complainant, Sk. Ataul Haque expired on 30.01.2011 as such the present petitioners, as the legal heirs and successors of Sk. Ataul Haque (since deceased), executed combined power of attorney in favour of Sk. Sirajul Haque to conduct and represent the criminal case on their behalf.

9. On 30.06.2012, Learned Additional District & Sessions Judge, Fast Track, 3rd Court, Calcutta, allowed the criminal revision filed by the accused. The order of Ld. C.M.M., Calcutta, in respect of

transfer of the case record from Ld. 8th M. M.'s Court, Calcutta to Ld. 13th M.M.'s Court, Calcutta, was set aside. So, the said case was lying pending before the Ld. M.M. 8th Court, Calcutta for further trial and disposal.

10. Thereafter, Ld. M. M. 8th Court, Calcutta dropped the proceeding on 06.08.2012 and discharged the opposite party no. 2 in view of prayer made by the accused and as per judgment dated 30.06.2012 passed in Criminal Revision No. 307 of 2010 by the Learned Additional Sessions Judge, 3rd Fast Track Court, Bichar Bhawan, Kolkata.

11. The petitioners herein challenged the said impugned order dated 06.08.2012 before the Learned Chief Judge, City Sessions Court, Calcutta in Criminal Revision No. 173 of 2012 and the Learned Court was pleased to pass the order on 21.01.2013, *inter alia*, as under:

“That this Crl. Revisional application is disposed of on contest but without cost. The impugned order dated 06.08.2012 passed in Crl. Case No. 15865 of 2007 by Ld. Metropolitan Magistrate, 8th Court, Calcutta is set aside. The Ld. Trial Court shall dispose of the application submitted before him by the present revisionists i.e. Smt. Khodaja Bibi and nine others after considering this question whether they can step

into shoes of their predecessor-in-interest i.e. Sk. Ataul Haque and thereafter dispose of the case as Warrant Procedure as laid down in Cr.P.C. The Ld. Magistrate should not be influenced by an observation made by this Court or made by the Ld. 3rd Fast Track Court, Calcutta in that Crl. Revn.

Sent down the LCR along with this order at once for compliance.”

12. The legal heirs and successors of Late Ataul Haque, through their Constituted Attorney, Sk. Sirajul Haque filed a fresh petition praying for substitution on 20.03.2013. When the said petition was fixed for hearing, it was pointed out that one of the legal heirs in the meantime expired so that the Constituted Attorney had no authority to proceed with the case with his previous power of attorney. Learned Trial Court directed the petitioners to take proper steps in compliance of Section 256 read with Section 302 of CrPC by rejecting their prayer for substitution on 04.02.2017 and fixed the next date i.e. on 04.05.2017 for necessary steps by the petitioners.

13. Being aggrieved by and dissatisfied with the said order and direction dated 04.02.2017 passed by the Learned Metropolitan Magistrate, 8th Court Calcutta, the petitioners herein filed Revisional

application being No. 111 of 2017 before the Learned Chief Judge, City Sessions Court at Calcutta. The said matter was transferred to the Learned Additional District and Sessions Judge, Bench – II, Bichar Bhawan, Calcutta and after hearing the parties, the Learned Additional District and Sessions Judge dismissed the same on 18.05.2018 and passed order, *inter alia*, as under:

“Considered the submission of both sides and the judgment referred by Ld. Advocate for the revisionist. After thorough perusal of the orders of the Ld. Trial Court, I find that the Constituted Attorney played a vital role in this case. He suppressed the fact of death of original complainant and, thereafter, when the matter has come into the notice of the Court then he again filed another power of attorney but in the meantime, one of the legal heirs died but that factum also has been suppressed by that person. So the power of attorney, on the basis of which he was trying to get into the trial Court and also before the Revisional Forum, is not acceptable in the eye of law because one of the executors died in the meantime and according to the legal position, due to death of one of the executors, it becomes inoperative.

So, on the basis of the said logic, I first want to observe that the person, who is representing here as Constituted Attorney and filed this revision, has no locus standi at all. Secondly, as the legal heirs of the

original complainant are not at all substituted in the Trial Court so revision of that legal heirs, through a Constituted Attorney, also cannot be accepted. Thirdly, I find by the said order Ld. Trial Judge did not cease the right of the legal heirs of original complainant to step into the shoe of their predecessor but only directed them to follow the provision of law for such substitution. So in my view, the manner, in which the said petition was disposed of, does not suffer from any illegality rather it can be said that it is very much justified and in accordance with correct proposition of law and thus, in my opinion, there is no merit in the instant revision and it is liable to be dismissed on contest and the order passed by the Ld. Trial Court is to be affirmed”.

Hence, this Criminal Revisional application.

14. Heard the arguments and submissions made by the rival parties and upon perusal of the Impugned Order dated 18.05.2018 passed by the Learned Additional District and Sessions Judge, Bench-II of City Sessions Court, Bichar Bhawan, Calcutta, this Court is of the view that earlier the Learned Metropolitan Magistrate, 8th Court, Calcutta has given a liberty to the petitioners to proceed with the case after complying with the provision as laid down in Section 256 read with Section 302 of the CrPC on relying a judgment passed

in the case of ***Jimmy Jahangir Madan Vs. Bolly Cariyappa Hindley (D) by Lrs.***¹.

15. In the said case, the Hon'ble Court allowed the prayer of the legal heirs of the original complainant to proceed with the case through their power of attorney holder. The Hon'ble Apex Court after considering the relevant provision of Section 302 of CrPC, set aside the Lower Court's order. However, kept open to the legal heirs to continue the proceeding filed by their predecessor against accused according to law.

16. It is not disputed by the learned counsel appearing on behalf of the petitioners that during pendency of the application filed by the power of attorney holder, one legal heir has been expired and without taking any proper steps, the petitioners wanted to continue the said proceeding on the basis of combined power of attorney and for that reason, the Learned Court below has given liberty to the petitioners to proceed with the case upon complying the provisions as laid down in Section 256 read with Section 302 of the CrPC.

17. Being aggrieved by and dissatisfied with the correctness, legality and propriety of the said Impugned Order, petitioners have filed a Revisional application before the Learned Additional District

¹ 2004 12 SCC 509.

and Sessions Judge, Bench-II of City Sessions Court, Bichar Bhawan, Calcutta.

18. The Learned Judge rightly observed that the legal heirs of the original complainant were not at all substituted in the Learned Trial Court. So, revision through constituted attorney of the legal heirs is also cannot be accepted. Finally, it was observed that the Learned Trial Court does not cease the right of the legal heirs of the original complainant to step into the shoe of their predecessor and liberty was given to follow the provisions of law for such substitution and to continue the proceeding further.

19. This Court is of the opinion that the Orders passed by the Learned Magistrate as well as Learned Additional District and Sessions Judge, do not suffer from any infirmity or illegality. Furthermore, Court has already given liberty to the petitioners to take steps in accordance with law in view of the provisions as laid down in the Code of Criminal Procedure for substitution and continuation of the proceeding.

20. Section 256 of Code of Criminal Procedure, 1973 reads as follows:

“256. 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.”

Section 302 of Code of Criminal procedure reads as follows:

“302. Permission to conduct prosecution.—(1) *Any Magistrate inquiring into or trying a case may permit the prosecution to be conducted by any person other than a police officer below the rank of inspector; but no person, other than the Advocate-General or Government Advocate or a Public Prosecutor or Assistant Public Prosecutor, shall be entitled to do so without such permission:*

Provided that no police officer shall be permitted to conduct the prosecution if he has taken part in the investigation into the offence with respect to which the accused is being prosecuted.

(2) Any person conducting the prosecution may do so personally or by a pleader.”

21. Consequently, this Court finds there are specific provisions in the CrPC and same is required to be followed by the petitioners before the Learned Trial Court otherwise, Learned Court cannot be proceeded with the proceedings filed by the predecessor of the petitioners. More so, he is no more. As such, the Criminal Revisional application has devoid of merit. The impugned order under challenge calls for no interference by this Court.

22. Accordingly, **CRR No. 2575 of 2018** is **dismissed**. Connected application being **CRAN 2/2019 (Old CRAN 2255/2019)** is also, thus, disposed of.

23. The petitioners are given liberty to take appropriate steps to substitute the legal heirs and successors of the original complainant by filing proper application before the Learned Trial Court. In turn, the Learned Trial Court shall decide the same independently and in accordance with law as early as possible since the proceeding is pending since 2007.

24. Let a copy of this Judgment be sent to the Learned Trial Court for information.

25. Case Diary, if any, is to be returned to the learned counsel for the State.

26. Interim order, if any, stands vacated.

27. All parties will act on the server copies of this Judgment uploaded from the official website of this Court.

28. Urgent photostat certified copy of this Judgment, if applied for, is to be given as expeditiously to the parties on compliance of all legal formalities.

(Ajay Kumar Gupta, J)