

CRR/2298/2014

SUNIL KUMAR
VS
STATE OF WEST BENGAL AND ORS

Adv. Biswajit Manna

...for the Petitioner.

Adv. Anand Keshari
Adv. Soumili Choudhury
Adv. Pubali Debnath

...for the Opposite Party No. 2.

Adv. Abhishekh Sinha
Adv. Diksha Ghosh

...for the State.

1. This Revisional Application has been filed by the petitioner under Section 482 of the Code of Criminal Procedure, 1973, assailing the order dated 13th June, 2014, passed by the learned Additional Sessions Judge, 3rd Court at Asansol in Criminal Appeal No. 8 of 2012 arising out of G.R. Case No. 686 of 2008, whereby the learned Judge dismissed the appeal filed by the petitioner.
2. The brief facts of the case are that the *de facto complainant* is the proprietor of the firm in the name and style of "Sunil Kumar", dealing in construction work etc. When the Police failed to take any steps in connection with the written complaint made before the concerned police station He filed an application under Section

156 (3) of the Cr.P.C. before the Jurisdictional Magistrate. He had alleged inter alia therein that the Opposite Party No. 2 to 4 committed offences under Section 386/323/341/34 by constantly putting in the fear of death, saying that if the complainant would not pay one lakh per month as goonda tax they will not allow the complainant and his agent (s) to continue any construction work and further snatched one cheque amounting to Rs. 5,00,000/- and beaten his employee, Bilash Ch. Mondal, with a fist and blow, after wrongfully restraining him, and prayed for direction upon the learned Magistrate to treat the petition of complaint as an FIR and cause an investigation.

3. Upon considering the case of the *de facto complainant*, the learned Magistrate directed the officer-in-charge of the concerned police station to register an FIR and cause an investigation.
4. Upon such direction, Asansol (South) Police Station Case No. 135 of 2008 dated 01.06.2008 under Section 386/323/341/34 IPC has been registered against the accused Nos. 2 to 4, and investigation has been initiated. Finally, upon culmination of the investigation, the chargesheet was submitted, being no. 115/08 dated 23.06.2008 under Section

341/323/506/34 against Opposite Party no. 2 to 4. However, Section 386 IPC was dropped.

5. Even though the charge sheet was submitted after dropping the aforesaid Section, the learned Magistrate took cognizance without noticing or notifying the de facto complainant.
6. The trial commenced and finally the accused persons were acquitted of charges for commission of offences punishable under Sections 341/323/506/34 of the Indian Penal Code on 24th day of August, 2011. It was alleged that no summon was served upon the complainant. He came to know about the acquittal after some time from another source.
7. Being aggrieved and dissatisfied with the acquittal order, the *de facto complainant* himself filed the appeal before the learned Sessions Judge being appeal no. 8 of 2012 arising G.R. Case No. 686 of 2008. The same was transferred to the learned Additional Sessions Judge, 3rd Court, for its disposal.
8. Upon hearing the parties, the learned judge outrightly dismissed the appeal on the ground that the appellant was not a victim. He does not fall within the definition of 'Victim' as the petitioner was the de facto complainant, but the person beaten or wrongfully restrained was not

the complainant/petitioner. Only the victim can prefer an appeal against the acquittal under section 372 of the CrPC. As such petitioner filed this Revisional Application, contending that the learned Judge did not consider that the petitioner also suffered injury when the cheque was snatched from his employee, and he has the right to appeal under section 372 of the Cr.P.C.

9. Upon hearing the submissions of the Learned counsels for the respective parties and on perusal of the record, especially the Lower Court Records, this Court finds the contention of the petitioner is genuine. No notice or summons was served upon the petitioner in accordance with the law; as such, he did not find any opportunity to ventilate his grievances. The Trial Court also took cognizance without inviting the victim/complainant, and the trial commenced. Even though one of the Sections i.e. section 386 IPC has apparently been dropped at the time of filing the charge sheet, no notice was properly served at the time of trial to the *de facto complainant*.
10. At this stage, it is very difficult to decide whether the *de facto complainant* is a victim or not without going through all the material. The

appellate court should have gone through the other grounds as well as other materials while deciding the appeal.

11. Upon perusal of the entire record, this Court is fully satisfied that no opportunity was given to the *de facto complainant*. Furthermore, the appellate court did not assess other grounds as raised by the appellant while deciding the appeal.
12. Consequently, the impugned order under challenge is erroneous and is hereby set-aside. The Appellate Court is directed to decide the case afresh on the merits as expeditiously as possible, independently and in accordance with law without granting unnecessary adjournment to the parties. The Appellate Court, while deciding the case, will not be influenced by any of the observations whatsoever made by this Court, as this Court does not enter into the merits of the case.
13. It is also made clear that all points, including the maintainability, would be open for the parties to ventilate before the appellate court.
14. Accordingly, CRR 2298 of 2014 is disposed of. There shall, however, no order as to costs.
15. Connected application, if any, is also thus, disposed of.

16. Let a copy of this order, as well as the Trial Court record, be transmitted to the Trial court for information and taking necessary action.
17. Urgent certified photocopy of this order, if applied for, be supplied as expeditiously as possible.

(Ajay Kumar Gupta, J.)