

CRR 4556 of 2024

Kamalesh Dutta
Vs.
Amal Kumar Ghosh & anr.

Adv. Supriyo Das,

... for the Petitioner.

Adv. M. R. Karmakar

...for the op. no.1.

The petitioner has assailed the judgment and order dated 2nd July, 2024 passed by the learned Additional District Judge, 2nd Court, Barasat in Criminal appeal no.5 of 2022 affirming the judgment dated 22nd November, 2021 delivered in C 525 of 2009.

It is not in dispute that the cheque amount of Rs.1,60,000/- has been paid by the petitioner to the opposite party.

Heard learned counsels for the parties.

It appears that on 22nd November, 2021 fixed by the learned trial Court for hearing argument as a last chance, the petitioner/accused filed an application before the learned trial Court seeking an opportunity to cross-examine the complainant, i.e., PW 1. The petitioner's prayer was allowed by the learned trial Court. The petitioner was directed to cross-examine the complainant on recall at 2.30 pm. on the same date. Though the petitioner/accused was present in Court on the said date all throughout, his learned advocate failed to turn up for cross-examination of the complainant for which the cross-examination was closed and the matter taken up for hearing argument. Learned counsel appearing for the petitioner before the learned trial Court did not appear at the time of hearing

argument for which argument was closed upon hearing the complainant. The learned trial Court delivered judgment on the same date.

The petitioner seeks to cross-examine the complainant in terms of the application filed by him before the learned trial Court which was allowed vide order dated 22nd November, 2021. Since the petitioner was present before the learned trial Court on the said date, he cannot be made to suffer due to laches, if any, on the part of the learned counsel representing him.

In view of the above, this Court is inclined to hold that the petitioner be granted an opportunity to cross-examine the complainant, i.e., PW1 in terms of the petition filed by him before the learned trial Court which was allowed.

The judgment and order dated 2nd July, 2024 passed by the learned Additional District Judge, 2nd Court, Barasat in Criminal appeal no.5 of 2022 and the order dated 22nd November, 2021 passed by the learned Judicial Magistrate, 2nd Court, Barasat in C 525 of 2009 insofar as cross-examination of the complainant was closed, argument heard and judgment delivered be quashed/set aside.

The learned trial Court is directed to grant an opportunity to the petitioner to cross-examine the complainant, i.e. PW1 on a single date to be fixed by the learned trial Court. No adjournment shall be granted to either of the parties on the said date. Upon completion of cross-examination, the learned trial Court shall proceed to hear arguments afresh and take the proceeding to its

logical conclusion within one month from the date of completion of argument.

Accordingly, CRR 4556 of 2024 is disposed of.

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

(Suvra Ghosh, J.)