

12.

Ct.29

CRR 2015 of 2025

19.02.2026

Bd.

Goutam Sengupta & Anr.

-Vs-

The State of West Bengal & Anr.

Mr. Biswarup Chatterjee

Mr. Pritam Sarkar

... for the petitioners.

Mr. Suman De

Ms. Srilekha Chatterjee

... for the State

Affidavit of service filed by the petitioners is taken on record.

Private opposite party is not represented.

The petitioners herein are aggrieved by the order dated 12.03.2025 by which the court below has rejected the petitioners application under section 227 of the Cr.P.C. by which the petitioners prayed for their discharge.

Being aggrieved by the said order learned counsel for the petitioners submits that the order impugned is bereft of any reason for such refusal and he has misconstrued the provisions of law and failed to consider that the allegations did not constitute the alleged offence against the petitioners. Therefore, he prayed for setting aside the order impugned.

Learned counsel for the State leaves the prayer to the discretion of the Court.

Having heard learned counsel for the petitioners and the State it appears that the court below on consideration held that an application is filed under section 227 of the Cr. P.C. which is not applicable in this context since the case is Magistrate triable so he ought to have preferred application under section 239 of the Cr.P.C. The other ground of rejection made by the trial court is

that he had already taken cognizance of the alleged offence mentioned in the charge-sheet and as such once cognizance is taken by him he has become functus officio and has no power to revoke, review or recall, alter or quash the same. Needless to say that the above observation of the court below in support of dismissal of the application is perverse since wrong mentioning of the section in the application can never be fatal and secondly he has completely taken erroneous view that once cognizance is taken he has become functus officio and therefore he does not have any power to hear or to dispose of the petitioners prayer for discharge. Therefore, the order impugned dated 12.03.2025 which pertains to dismissal of the petitioners application under section 227 of the Cr. P.C. is hereby set aside.

The court below is directed to hear the said application titled under section 227 of the Cr.P.C. as an application under section 239 of the Cr.P.C. He is further directed to dispose of such application afresh after giving opportunity to both the parties to contest preferably within a period of sixty days from the date of communication of this order, without being influenced by any observation made herein.

CRR 2015 of 2025 stands disposed of.

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

(Dr. Ajoy Kumar Mukherjee, J.)