

25.03.2026

Court No.34

S/L.24

sg

CRR 3498 of 2022

In the matter of : **Prabir Kumar Ghosh**

Petitioner.

Mr. Prabir Kumar Ghosh

...for the petitioner (in person).

Mr. Debajyoti Deb

Ms. Sodyuti Parekh

Ms. Aparupa Bhattacharya

...for the op no.2 & 3.

Ms. Amita Gaur

Mr. Rajashree Tah

...for the State.

1. This revisional application has been filed under Section 482 of the Code of Criminal Procedure against an order dated July 14, 2022 passed in a complaint under Section 311 of the Code of Criminal Procedure in connection ACGR No. 1265 of 2013 whereby the learned Judicial Magistrate, 10th Court, Alipore, 24-parganas, South.

2. The petitioner is a practicing advocate and appearing in - person before this Court and also conduct his own case before the Court of Judicial Magistrate.

3. The proceeding emanated from a complaint lodged before the Officer-in-charge, Kasba Police Station by the present petitioner against the present opposite parties, for abusing him and threatening him with dire consequences. It is the case of the petitioner that on the basis of complaint, matter was proceeded with

by the learned Magistrate and it was fixed on 1st July, 2019 but due to his pre-occupation, he could not appear before the learned Court at the time when the matter was called on that day and learned Court passed the order expunging the evidence of defacto-complainant.

4. It is submitted by the petitioner that he was apprised by such fact by the learned advocate Mr. Mit Guha Roy on November 5, 2019 about the next date fixed for evidence on February 11th, 2020. The Petitioner after being intimated, filed an application in the month of December, 2019 under Section 311 of the Code of Criminal Procedure, praying for recalling of order dated 1st July, 2019.

5. The application was fixed for hearing on 14th July, 2022 and on that day also the petitioner could not appear. It is his case that due to some medical emergency he had to rush to Chennai on 13th July, 2022. The learned Magistrate passed the order on 14th July, 2022 dismissed the application filed under Section 311 without going into the merits of the case.

6. It is submitted by the petitioner that the learned Magistrate did not apply his judicial mind and without entering into the merits of the case, dismissed the application under Section 311 on the ground of absence on behalf of the petitioner which is not tenable in the eye of law. It is further submitted that unless opportunity is given to the present petitioner to adduce evidence he will be highly

prejudiced as he was threatened with dire consequence by the opposite parties.

7. Per contra, learned advocate representing the opposite parties raises strong objection and submits that the present petitioner was habitual absentee before the learned Court of Magistrate and previously witness warrant also issued against him on June, 2016. Excepting that he took several adjournments on several dates and kept the matter pending since 2013. The opposite parties are also respectable senior citizens, who are harassed continuously because of long pendency of the proceeding with false and frivolous accusation.

8. Heard the Submission of the petitioner -present in person and the learned advocate representing the opposite parties .On perusal of the materials on record it appears that the complaint was lodged by him way back in the year 2013. The genesis of the complaint is an agenda of the meeting where discussion took place on the issue of removal of uprooted and cutting branches of plants which were lying uncared and required to be removed. Present petitioner as well opposite parties are the owners of the respective flats in respect of the residential building situated at 74, R.k. Chatterjee Road, Kol-700042.

9. On close scrutiny of the petition it is clearly visible that the date before the Court of Magistrate was fixed on the 1st July, 2019. Present petitioner did not turn up when it was fixed for adducing

evidence by him and the next date was fixed on 13th December, 2022 for evidence of CSW-II.

10. The Petitioner had tried to impress the court with the submission about the intimation received regarding the order passed on 1.7.2019 from one advocate when he was never represented by any advocate and throughout appeared in person. That apart when he was aware that the date was fixed on 14th July, 2019 and he could not appear on that date it was usual that he would try to enquire about the next date fixed by the Court but the petitioner instead of doing that waited till he learnt the same from the learned advocate long after 5 months, in the month of November, 2019. After that in the month of December, 2019 he filed the application under Section 313 of the Code of Criminal Procedure. Thereafter when the date was fixed for hearing, he did not turn up and also did not entrust any advocate or any person to appear before the Court.

11. On giving a cursory glance of the certified copy of the order placed before the Court on behalf of the learned advocate for the opposite parties, it is apparent that initially petitioner did not appear as a result warrant was issued against him. According to the petitioner he has filed a proceeding under Section 340 Cr.P.C and that proceeding is still pending .Subsequently also on account of his absence the matter was adjourned, so he failed to show that he was diligent in carrying on the proceeding. The petitioner appears personally and an advocate by profession is well aware about the

effect of prolong delay in a criminal proceeding and in this case the Proceeding was pending since 2013.

12. This Court is unable to accept the contention of the petitioner that because of certain medical emergency he could not appear on the date fixed but all along was diligent .His contention about receiving intimation from an advocate does not help him as despite his knowledge about the date fixed on 1.7.2019, he made no endeavour to learn about the next date and only came to learn from the advocate long after 5 months which itself is sufficient to show his apathy in dealing with his own case. More so the said concern advocate was in no way connected with the case of the petitioner .The petitioner gave no reasons or explanation as to what prompted the petitioner to wait till the information is received from the learned advocate after 5 months. Subsequently also he did not make any effort to make any prayer for adjournment on the date so fixed through any person and hence the Learned court rightly observed that the petitioner is not diligent and reject his application filed under section 311 of the Code of Criminal Procedure.

13. Therefore considering this facts and circumstances of the case and considering the conduct of the petitioner in delaying the proceeding, this Court do not find any merit in the revisional application and hence is liable to be dismissed.

14. It is seen that the next date is fixed for taking evidence of CSW-II and it is expected the learned Magistrate on the date so

fixed would complete the evidence and would try to dispose of the entire proceeding as expeditiously as possible.

15. Hence this criminal revisional applications stands dismissed.

16. No order as to costs.

17. Parties are to act on the server copy of the order duly downloaded from the official website of the Calcutta High Court.

[Chaitali Chatterjee (Das), J.]