Sonali Chatterjee Vs State of West Bengal

C.R.M. No. 1687 of 2009

Court: Calcutta High Court

Date of Decision: June 17, 2010

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) â€" Section 251, 258#Penal Code, 1860 (IPC) â€" Section 323

Citation: (2011) 5 CHN 162

Hon'ble Judges: Prasenjit Mandal, J

Bench: Single Bench

Advocate: Kallol Mondal, Krishan Ray, for the Appellant; S.S. Roy for the State, for the Respondent

Final Decision: Allowed

Judgement

Prasenjit Mandal, J.
Affidavit-of-service filed by the petitioner be kept with the record. Service has been effected upon the private

opposite party and the State; but none appeared on behalf of the private opposite party. So the matter is taken up for hearing. This application is

directed against the order dated 26th May, 2008 passed by the learned Judicial Magistrate, Fifth Court, Hooghly in N.G.R. Case No.3429 of

2006, thereby dropping the proceeding u/s 258 of the Code of Criminal Procedure, 1973.

2. The de facto complainant of the Bandel P.P.G.D.E. No. 236 dated 09.03.2005 u/s 323 of the IPC has preferred this revisional application. His

contention is that he is the victim of the case but the learned Magistrate after examination of one formal witness closed the prosecution case without

examining the other witnesses including himself. Thus, he did not get any opportunity to ventilate his grievance in the said N.G.R. case. He has

prayed for vacating/setting aside the order dated 26.05.2008.

3. The learned Advocate for the petitioner submits that though he was the victim for offence u/s 323 of the IPC the learned Magistrate did not

examine him at all at the time of trial. After examination of a police personnel the learned Magistrate closed the case when no other witness turned

up. In fact, the warrant of arrest was issued against the rest witnesses including the IO; but without waiting for the execution report of the warrant

of arrest, he closed the case by stopping examination of the witnesses in the order impugned.

4. On the other hand, Mr. Roy appearing for the State, has fairly submitted that orders impugned have not been properly passed and the Court

should have given opportunity to the de facto complainant to adduce evidence.

5. Having heard the submission of the learned Advocate of both the sides and on perusal of the materials on record, I find that the accused persons

were examined u/s 251 of the Cr.PC on 10.07.2007 fixing the next date 16.10.2007 for recording evidence. On that date no witness was present

and the service return shows that summons could not be served upon the witnesses. The learned Magistrate issued bailable warrant of arrest

against the witnesses fixing the next date 22.02.2008. On that date, one police personnel was examined and discharged. He also passed orders for

issuance of non-bailable warrant of arrest against the S.I. Pradip Das and summons upon the P.R.W.3 fixing the next date 26.05.2008 for

recording evidence. Then on 26.05.2008 as no witness was present and no E.R./S.R. was received, the learned Magistrate stopped the case and

acquitted the accused persons u/s 258 Cr.PC. Thus, I find that the learned Magistrate did not wait even for the execution report of warrant of

arrest. The victim was not examined at all.

6. This being the position, the order impugned is not sustainable at all and it must be set aside.

7. Accordingly, this application is allowed. The order dated 26.05.2008 passed by the learned Judicial Magistrate, Fifth Court, Hooghly Sadar in

N.G.R. case No.3429 of 2006 is hereby set aside. The learned Magistrate shall issue summons upon both the accused persons fixing a date for

appearance. He shall also give opportunity to the prosecution to adduce evidence by examination of the remaining witnesses including the victim.

He shall issue process upon the witnesses. Accordingly, after hearing both sides, he shall dispose of the case within two months from the date of

communication of this order.

8. There will be no order as costs. Urgent xerox certified copy of this order, if applied for, be given to the parties on their usual undertaking.