

(2009) 02 CAL CK 0012**Calcutta High Court****Case No:** C.R.R. No. 3339 of 2008

Ramnarayan alias Jeetram Gupta
and Others

APPELLANT**Vs**

State of West Bengal and
Another

RESPONDENT**Date of Decision:** Feb. 6, 2009**Hon'ble Judges:** Arunabha Basu, J**Bench:** Single Bench**Advocate:** Ayan Bhattacharyya, for the Appellant;**Judgement**

Arunabha Basu, J.

On perusal of the supplementary affidavit filed by the petitioner, unfortunate and shocking state of affairs is appearing about the conduct of the judicial officer who is now presiding over the Court of the learned Judicial Magistrate, 3rd Court, Bankura.

2. It may be pointed out that by an order dated 23.9.08, this Court after hearing the submission made by the learned Advocate for the petitioners directed that there shall be stay of all further proceedings in connection with the Complaint Case No. 290 of 2008 pending before the Court of the learned Judicial Magistrate, 3rd Court, Bankura. From the affidavit filed by the petitioners herein, it appears that the learned Magistrate refused to accept even the certified copy of the order on the ground that acceptance of such certified copy of the order passed by the High Court depends on the prior appearance of the accused and after they are granted bail. It further appears that the learned Magistrate refused to acknowledge the authority of the learned Advocate for the petitioners herein who appeared before the learned Court below armed with Vakalatnama issued by his clients that the said learned Advocate has no such authority in view of the objection raised by the learned Advocate for the complainant that appearance of the accused persons is a pre-condition to entertain such action on the part of the petitioners herein.

3. After going through the recital in the affidavit with supported documents, I am of the view that the learned Court below has committed an act of Contempt of Court when he refused to acknowledge and accept the order of stay passed by this Court and even to receive the certified copy of the order which was sought to be produced by the learned Advocate for the petitioners who appeared before the learned Court below. However, this Court takes a lenient view of the matter as because the learned Magistrate may be a junior officer and may have been influenced by the objection raised by the learned Advocate for the complainant before his Court. I make it clear that the learned Court below is working under a wrong conception of law that even when the entire proceeding is stayed by the High Court, no action can be taken by the lower Court on the basis of the certified copy of the order unless the accused enters appearance before the learned Court below. Such legal concept on the part of the learned Court below is not only illegal but may result in unwarranted consequences if the same is persisted by the learned Court below. The learned Court below is directed to apply his judicial mind while deciding a matter and when he has received the order passed by the Superior Court, he should act on the basis of the said order without being influenced or guided by any extraneous consideration.

4. This being the position, it is directed that the learned Court below shall act on the basis of the certified copy of the order produced before him without insisting prior appearance of the accused persons.

5. As the matter is already fixed on 10.2.09, let this matter appear in the list under the heading "Extension of Interim Order" on that date.

6. Criminal Section is directed to supply urgent Photostat copy of the order to the learned Advocate for the petitioners as and when applied for.