

(2013) 07 CAL CK 0106

Calcutta High Court

Case No: C.R.R. No. 2155 of 2013

In Re: Alum Molla @ Alum Molla

APPELLANT

Vs

RESPONDENT

Date of Decision: July 25, 2013

Citation: (2013) 4 CHN 172 : (2014) CriLJ 742

Hon'ble Judges: Joymalya Bagchi, J

Bench: Single Bench

Final Decision: Disposed Off

Judgement

Joymalya Bagchi, J.

The petitioners are aggrieved by the institution of the impugned proceeding being C.R. Case No. 312 of 2011 pending before the learned Additional Chief Judicial Magistrate, Katwa, Burdwan arising out of Ketugram Police Station Case No. 103 of 2011 dated 20.5.2011 under Sections 149/448/380/436/457/34 of the Indian Penal Code and prays for quashing of the same on the ground that the earlier criminal proceeding instituted by the opposite party No. 2 herein was dismissed for non-prosecution. The learned Counsel appearing for the petitioners submits that the opposite party No. 2 had taken out an earlier application u/s 156(3) of the Criminal Procedure Code on the selfsame facts before the learned Chief Judicial Magistrate, Katwa. By order dated 8.10.2010, the learned Magistrate declined to send the application to the police for registration of a First Information Report but, on the contrary, took cognizance of the alleged offences u/s 200 of the Code of Criminal Procedure and proceeded under the Code. For the reasons best known to the opposite party No. 2, the opposite party No. 2 chose not to appear in the said proceeding and the proceeding was dismissed for default by order dated 29.8.2011.

2. Suppressing the pendency of the aforesaid complaint proceeding, the opposite party No. 2 took out another application u/s 156(3) of the Code of Criminal Procedure on selfsame facts which, however, was sent to the Police Station for investigation. Pursuant to such investigation, police report was filed, prima facie,

disclosing commission of the alleged offences. Learned Magistrate having taken cognizance on the basis of the said police report and having issued process against the petitioners, the latter have approached this Court praying for quashing of the same.

3. It has been argued on behalf of the petitioners that suppression of the factum of institution of the earlier proceeding and the denial of the relief for registering an F.I.R. u/s 156(3) of the Code of Criminal Procedure as aforesaid affects the jurisdiction of the Court in taking cognizance in the subsequent proceeding. The learned Counsel in support of her contention has relied on [Shiv Shankar Singh Vs. State of Bihar and Another,](#)

4. The issue as to the jurisdiction of the Court to entertain a second complaint is dependent on the premise whether the first complaint was dealt with or disposed of on merits or not.

5. In the factual backdrop of the instant case, in the earlier criminal proceeding through the prayer for registration of F.I.R. u/s 156(3) of the Code of Criminal Procedure was turned down, there was no adjudication on merits of the allegations in question and the learned Magistrate, in fact, had taken cognizance of the same and was proceeding under the Code when it was dismissed on a technical ground viz., non-appearance of the complainant.

6. Therefore, I am unable to be persuaded to accept the submission of the learned Counsel for the petitioners that the earlier complaint proceeding which was dismissed due to non-appearance of the complainant was dismissed on merits. Mere refusal of the prayer u/s 156(3) of the Code of Criminal Procedure does not amount to dismissal of the allegations in the complaint on merits and does not have any bearing on the continuation of the proceeding in the subsequent case. Moreover the investigation in the subsequent case is already over and the learned Magistrate has taken cognizance of the alleged offences on the police report which has been submitted u/s 173 of the Code of Criminal Procedure.

7. Accordingly, I am of the view that the decision cited on behalf of the petitioners does not come to the aid of the petitioner in the facts of the case. I, therefore dispose of this revisional application giving liberty to the petitioner that they would be at liberty to agitate their defence on merits in accordance with law before the learned Magistrate. The application is accordingly disposed of.