
(2018) 06 CAL CK 0134
In the Calcutta High Court
Case No : CRR 2938 of 2017

Pranam Biswas & Anr.

APPELLANT

Vs

Kalyan Dey & Anr.

RESPONDENT

Date of Decision : 12-06-2018

Acts Referred:

Indian Penal Code, 1860 — Section 34, 323
Code Of Criminal Procedure 1973 — Section 2D, 156(3)

Citation : (2018) 06 CAL CK 0134

Hon'ble Judges : SHIVAKANT PRASAD, J

Bench : Single Bench

Advocate : N. S. Ghosh, Sutanuka Chowdhury

Final Decision : Disposed Of

Judgement

The affidavit of service is filed to show that the copies of this revisional application have been served on the other side. One Sikha Dey stated to be

the wife of Kalyan Dey, the complainant has received the notice and the process as issued on behalf of the petitioner. The stay in this application has

been granted vide order dated 4th September, 2017 in respect of Complaint Case No.12 of 2012 dated 9th January, 2012 under Sections 323/34 of the

Indian Penal Code pending in the court of Judicial Magistrate, 6th Court, Sealdah for a period of six weeks upto puja vacation or until further order

whichever is earlier.

It appears from the order sheet that an application under Section 156(3) of the Code of Criminal Procedure to treat the FIR by O.C. concerned was

rejected instead the learned Magistrate treated this application as a complaint under Section 2D of the Code and issued process under Section 323/34

of the Indian Penal Code.

Statement of S.A. not annexed till date. Now, there is no stay of the proceeding and there is no legal impediment for the complainant to continue with

the trial of the case, although it is seen from the order sheet a dismal picture so far as the conduct of the trial court is concerned. It appears from the

order sheet dated 9th October, 2013 that the learned Magistrate found the complainant absent and the accused persons on bail without step. The date

was earlier fixed for recording plea of the accused instead of taking any step for direction to the surety to produce the accused persons for not taking

step and straightway issued warrant of arrest.

When the accused persons petitioners herein appeared, they were granted bail and the W.A. was recalled and the plea thereafter was recorded only

on 15th September, 2014 prior to that the petitioner accused persons were present by filing Hazira. The date was fixed on 2nd August, 2014 when the

complainant filed fresh vokatnama and when the accused persons were present, but the Magistrate did not record the plea of the accused persons

instead he preferred to adjourn the case for recording plea on 15th September, 2014 and for their appearance otherwise a fresh warrant will be issued.

Such orders passed by the learned Magistrate are hopeless orders and misuse the process of the court. He ought to have recorded the plea when the

accused persons were present.

All these orders appear to be routine order recorded by the Bench Clerk and appears to have been signed by the Presiding Officer. The learned

Magistrate must take into account with regard to the conduct of the parties before him while he is passing the order. However, it appears that at this

stage, the date is fixed for evidence. When the date was fixed for evidence, the complainant started taking time and absented himself without

production of the witnesses to face the trial and it would appear from the order passed by the learned Magistrate himself. Till date no witness has

been examined.

Learned Magistrate is directed to fix the date to examine the witnesses and he will close the evidence and will take legal recourse in accordance with

law, if the complainant fails to produce witnesses. Thus, this revisional application is disposed of with the above direction. Urgent photostat certified

copies of this order, if applied for, shall be given to the parties, as expeditiously as possible on compliance of all necessary formalities.