

(2016) 04 CAL CK 0079

In the Calcutta High Court

Case No : C.R.R. No. 2942 of 2013 With C.R.N. No. 3985 of 2015

Prasanta Karmakar & Anr.

APPELLANT

Vs

State of West Bengal & Anr.

RESPONDENT

Date of Decision : 11-04-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 245(3)

Citation : (2016) 4 CalCriLR 231 : (2016) 2 CalLJ 292

Hon'ble Judges : Mr. Ranjit Kumar Bag, J.

Bench : Single Bench

Advocate : Mr. Debabrata Acharyya, Mr. Prabir Adya and Mr. Souma S. Roy, Advocates, for the Appellant; Mr. Ayanava Bhattacharyya and Mr. Tapabrata Bhattacharya, Advocates, for the Respondent

Final Decision : Disposed Off

Judgement

R.K. Bag, J.—The petitioner has preferred this revision under Section 401 read with Section 482 of the Code of Criminal Procedure challenging the order dated May 24, 2013 passed by learned Judicial Magistrate, 5th Court, Alipore in case No. C-06 of 1999, by which learned Magistrate refused to discharge the petitioner under Section 245(3) of the Code of Criminal Procedure.

2. The petitioner-Ratan Karmakar died during the pendency of the revision. On September 24, 2015 learned Single Judge of this Court permitted the applicants-Prasanta Karmakar and Kanika Karmakar to step into the shoes of the petitioner-Ratan Karmakar for continuation of hearing of the revision. Accordingly, the petitioner-Prasanta Karmkar and the petitioner-Kanika Karmakar have now challenged the order dated May 24, 2013 passed by learned Judicial Magistrate, 5th Court, Alipore in connection with C-06 of 1999. It is relevant to point out that the application being CRAN 3985 of 2015 filed by the Opposite Party No.2 is not listed for hearing on this day. On the consent of learned counsel representing both parties the said application being CRAN 3985 of 2015 is treated as on day's list for the purpose of hearing along with revision. The original application being

CRAN 3985 of 2015 is not available on record and as such I have acted on the copy of the application supplied by learned counsel for the Opposite Party No.2. By this application the Opposite Party No.2 has prayed for expeditious disposal of case No. C-06 of 1999 pending before the court of learned Judicial Magistrate, 5th Court, Alipore.

3. It appears from record that the Opposite Party No.2 filed a petition of complaint before the court of learned Magistrate against three accused persons including the present petitioners-Prasanta Karmakar and Kanika Karmakar for issuance of process against them under Sections 406/120B/34 of the Indian Penal Code. It appears from record that learned Magistrate issued process against all the accused persons including the present petitioners. Both the petitioners appeared before the trial court on November 6, 1999. It appears from the impugned order under challenge in the revision that on May 20, 2010 the present petitioners filed an application before the court of learned Magistrate praying for discharge and the said application was rejected by learned Magistrate on May 26, 2010. It further appears from the said order that the Opposite Party No.2 being the complainant of the criminal case examined eleven witnesses in support of her case and filed an application under Section 311 of the Code of Criminal Procedure for recalling P. W. 1 which was allowed by learned Magistrate on May 24, 2013. However, learned Magistrate refused to discharge the petitioners under Section 245(3) of the Code of Criminal Procedure on consideration of the volume of evidence adduced by the Opposite Party No.2 before consideration of charge against the petitioners.

4. With the above factual matrix, learned counsel for the petitioners contends that learned Magistrate has not considered the provisions of Section 245(3) of the Code of Criminal Procedure in proper perspective. He further submits that learned Magistrate can consider whether the evidence adduced by the Opposite Party No.2 before the trial court during the period of four years from the date of appearance of the petitioners as accused persons before the trial court and not the evidence adduced by the Opposite Party No.2 after expiry of four years from the date of appearance of the petitioners before the trial court. Learned counsel also submits that there is inordinate delay on the part of the Opposite Party No.2 in adducing evidence before charge and thereby the petitioners have been suffering and the right is accrued in favour of the petitioners for discharge under Section 245(3) of the Code of Criminal Procedure.

5. Learned counsel for the Opposite Party No.2 has referred to the copy of orders passed by learned Magistrate and submitted that the Opposite Party No.2 could not adduce evidence before the trial court expeditiously due to long absence of the petitioners from the trial court and due to absence of the Presiding Officer of the court for prolonged period of time and as such the Opposite Party No.2 cannot be made solely liable for not adducing evidence before charge within a period of four years from the date of appearance of the petitioners as accused persons before the trial court. Learned counsel argues that learned Magistrate

passed the order by application of judicial mind after considering the volume of evidence adduced by the Opposite Party No.2 before consideration of charge against the petitioners.

6. The question for consideration of this Court is whether the petitioners are liable to be discharged under Section 245(3) of the Code of Criminal Procedure for failure on the part of the Opposite Party No.2 to adduce evidence in support of the prosecution case within a period of four years from the date of appearance of the petitioners before the trial court. It is relevant to quote the provisions of Section 245(3) of the Code of Criminal Procedure as amended by the West Bengal Act 24 of 1988, which is as follows: -

"245(3). If all the evidence referred to in Section 244 are not produced in support of the prosecution within four years from the date of appearance of the accused, the Magistrate shall discharge the accused unless the prosecution satisfies the Magistrate that upon the evidence already produced and for special reasons there is ground for presuming that it shall not be in the interest of justice to discharge the accused."

7. In the instant case the petitioners being the accused persons appeared before the trial court on November 6, 1999. On perusal of copy of orders passed by the trial court from December 16, 1999 till February 21, 2013 I find that on many occasions the hearing could not take place due to absence of the Presiding Officer of the court and on many occasions hearing could not take place for absence of the petitioners from the court. It also appears from the said orders passed by learned Magistrate that the trial court had to issue warrant of arrest against the petitioners to compel their attendance before the court for the purpose of hearing of the case. However, the Opposite Party No.2 examined eleven witnesses in support of prosecution case till the date of passing of the impugned order under challenge in the revision. On perusal of the provision of Section 245(3) of the Code of Criminal Procedure as incorporated by the State of West Bengal by way of amendment, I find that the accused persons are entitled to be discharged if the complainant fails to produce evidence in support of prosecution case within four years from the date of appearance of the accused before the court, unless the court is satisfied from the evidence already produced and for special reasons that the accused is not entitled to be discharged in the interest of justice.

8. On consideration of the fact that the Presiding Officer of the court was absent for prolonged period of time and on consideration of the fact that the present petitioners being accused of the criminal case did not co-operate with the trial court for expeditious hearing, I think there are special reasons for presuming that it shall not be in the interest of justice to discharge the petitioners for not adducing sufficient evidence by the Opposite Party No. 2 within a period of four years from the date of appearance of the accused persons before the trial court. In view of the reasons stated herein above I do not think that the trial court will consider only the evidence adduced by the Opposite Party No.2 during the period

of four years from the date of appearance of the accused persons before the trial court to decide whether sufficient evidence is adduced as laid down in Section 245(3) of the Code of Criminal Procedure. In view of my above findings I do not find any illegality in the order passed by learned Magistrate by refusing to discharge the petitioners under Section 245(5) of the Code of Criminal Procedure.

9. In "Kumar Krishna Mondal v. Anjali Mondal" reported in 1996 Cri LJ 3134 the Hon"ble Division Bench of our High Court refused to apply the Section 245(3) of the Code of Criminal Procedure in a case whether the complainant could not adduce evidence within a period of four years from the date of appearance of the accused person before the trial court for circumstances beyond the control of the complainant. By following the said decision I would also like to hold that the Opposite Party No. 2 could not produce evidence in support of prosecution case within four years from the date of appearance of the accused before the trial court for the circumstances beyond the control of the Opposite Party No.2. As a result, the provision of Section 245 (3) of the Code of Criminal Procedure cannot be attracted in the facts of the present case. However, on consideration of the inordinate delay in the hearing of the case pending before the trial court I would like to observe that learned Magistrate must not give any further opportunity to the Opposite Party No.2 to adduce evidence before charge, apart from recalling P.W.1 as already directed by the order dated May 24, 2013. Learned Magistrate is also directed to expedite the hearing of the case if necessary by fixing the date of hearing on day-to-day basis as laid down in Section 309 of the Code of Criminal Procedure and to dispose of the same as early as possible preferably within a period of six months from the date of communication of the order.

10. In view of my above findings the order dated May 24, 2013 passed by learned Judicial Magistrate, 5th Court, Alipore in case No.C-06 of 1999 is affirmed. Both the criminal revision and the application being CRAN 3985 of 2015 are, thus, disposed of.

11. Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis after compliance with all necessary formalities.