

(2018) 05 CAL CK 0197
In the Calcutta High Court
Case No : C.R.R 1053 of 2018

S. Sreekumar Sree Kumar

APPELLANT

Vs

Tapan Kumar Mondal Tapan Mandal & Anr.

RESPONDENT

Date of Decision : 15-05-2018

Acts Referred:

Indian Penal Code, 1860 — Section 120B, 420, 468, 471

Code of Criminal Procedure, 1973 — Section 265B, 265C, 265D, 265E, 360

Citation : (2018) 05 CAL CK 0197

Hon'ble Judges : SHIVAKANT PRASAD, J

Bench : Single Bench

Advocate : Milan Mukherjee, Sourav Chatterjee, Soumya Nag

Final Decision : Disposed Of

Judgement

In this application the order dated 19.02.2018 passed by the learned Chief Judicial Magistrate, Port Blair in G.R Case No. 1112 of 1996 arising out of

RC-8/E/96-EOW-Cal dated 23.9.1996 under Sections 420/468/471/120B of the Indian Penal Code is under challenge.

It is submitted by Mr. Milan Mukherjee, learned senior counsel appearing for the petitioner, that there is no consideration by the learned Magistrate in

so far as the guidelines for mutually satisfactory disposition, as provided under Section 265C is concerned and there is no such report of mutually

satisfactory disposition submitted before the Court as required under Section 265D Cr.P.C. My attention is also invited to the provision as embodied in

Section 265E regarding disposal of the case relating to "Plea Bargaining" as laid down in Chapter XXIA of the Code of Criminal Procedure

which provides as under :-

"265E. Disposal of the case.- Where a satisfactory disposition of the case has

been worked out Section 265D, the Court shall dispose of the case

in the following manner, namely:-

(a) the Court shall award the compensation to the victim in accordance with the disposition under section 265D and hear the parties on the quantum of

the punishment, releasing of the accused on probation of good conduct or after admonition under section 360 or for dealing with the accused under the

provisions of the Probation of Offenders Act, 1958 (20 of 1958) or any other law for the time being in force and follow the procedure specified in the

succeeding clauses for imposing the punishment on the accused;

(b) after hearing the parties under clause (a), if the Court is of the view that section 360 or the provisions of the Probation of Offenders Act, 1958 (20

of 1958) or any other law for the time being in force are attracted in the case of the accused, it may release the accused on probation or provide the

benefit of any such law, as the case may be;

(c) after hearing the parties under clause (b), if the Court finds that minimum punishment has been provided under the law for the offence committed

by the accused, it may sentence the accused to half of such minimum punishmentâ??

(d) in case after hearing the parties under clause (b), the Court finds that the offence committed by the accused is not covered under clause(b) or

clause (c), then, it may sentence the accused to one-fourth of the punishment provided or extendable, as the case may be, for such offence.â??

On the basis of the written complaint lodged by the respondent no. 1 the case under reference has been started on its registration for investigation

against G. Mohandas, M/S Tracstar Investments Pvt. Ltd. and unknown others. Charges were framed by the learned Chief Judicial Magistrate, Port

Blair against the petitioner and others, to which they pleaded not guilty and claimed to be tried. The complainant was examined as PW 1 in full.

Â During the pendency of the case which was started in the year 1996 i.e. about 23 years ago, an application for Plea Bargaining under Section 265B

Cr.P.C was filed on 19.02.2018 and on the same day learned C.J.M disposed of the application by accepting the plea of bargaining and directed the

petitioner and others to pay fine a sum of Rs.75,000/- each, but without recording the reasons under Section 360 of the Code of Criminal Procedure

and/or any curative provisions of law to be dealt with by the learned Court in

respect of the petitioner. There is specific finding in the order that there is no loss of revenue to the State exchequer and the offence alleged does not affect the socioeconomic condition of the country.

Â Since the application was disposed of under Section 265B without considering the parameter for application of the law and without adhering to the

provisions relating to mutually satisfactory disposition between the parties, the compensation so awarded was given and Mr. Mukherjee submits in

unequivocal term that in compliance of the Court's order the petitioner has already deposited a sum of Rs.75,000/- with the Treasury. It is not

understood as to why the petitioner was directed to deposit the said compensation amount with the Treasury of the Government.

The amount so awarded towards compensation was undoubtedly not to the Government because State exchequer has not lost any revenue. It is the

defacto complainant who may have suffered the loss and the order of compensation ought to have been directed to be payable to the defacto

complainant. It signifies that the defacto complainant was also not asked to be present to work out mutually satisfactory disposition. Accordingly,

learned counsel submits that in view of such direction the petitioner has deposited a sum of Rs.75,000/- towards compensation to the Treasury without

prejudice to himself.

The matter is required to be heard on its merit. So, a copy of this application together with the annexures be served on the opposite parties under

speed post with A/D with direction to file an affidavit of service. List the matter under the heading 'Adjourned Motion' on 7th June, 2018. In the

mean time, there shall be stay of operation of the order dated 19.02.2018 till the next date fixed. Urgent photostat certified copy of this order, if applied

for, shall be given to the parties as expeditiously as possible.