

Calcutta High Court

HON'BLE JUDGE(S): **BIBEK CHAUDHURI , J**

RAJA CHANDRA GARG V. STATE OF WEST BENGAL

CRR No. - 3362 of 2022, decided on 15/11/2022

Criminal P.C. (2 of 1974) , S.245(3)— Discharge - Ground of non-conclusion of case within time - On date fixed for passing order in discharge application, Magistrate did not pass any order - Parties did not get any opportunity to know if complaint case was liable to be dropped by stopping further proceeding - Magistrate straightway issued warrant of arrest against accused - Personal attendance of accused persons was insisted for unknown reasons at time of passing order in discharge application - Discharge order suffered from illegality and material irregularity, hence liable to be set aside.

(Para 9, 10)

Name of Advocates

Anirban Dutta, Sachetan Ghosh for Petitioner; S. S. Imam, Arabinda Manna,kallol Mondal, Krishan Ray, Souvik Das for Respondent.

1. **ORDER:-**Affidavit-of-service filed in Court today be kept with the record.
2. A short question is involved in the instant revision.
3. In Complaint Case No. 751/2013 an application was filed on behalf of the accused persons/petitioners under Section 245(3) of the Code of Criminal Procedure praying for their discharge on the ground that trial of the case was not concluded within the statutory period of time.

The complainant filed a written objection in the Court below. The Learned Magistrate heard the petitioners and the complainant at length on 6th July, 2022 and fixed 17th August, 2022 for passing order upon the application under Section 245(3) of the Code of Criminal Procedure. On 17th August, 2022 the Learned Magistrate passed the following order :-

"Today is fixed for order.

Complainant is absent and prays for consideration.Heard. Considered.

The prayer is allowed.

On call none appear for the accused.It is now 12:00 p.m. now.

An attendance is lying in the record filed by the Ld. Advocate for the accused.

However no name of the accused is written nor the accused is present in Court.
Issue WA against the accused.

Complainant is directed to file requisite.

Fix 10.11.2022 for ER of WA and requisite."

4. Grievance of the petitioners is that the Learned Magistrate did not pass any order upon the application under Section 245(3) of the Code of Criminal Procedure, though 17th August, 2022 was fixed for passing such order.

5. It is also submitted on behalf of the petitioners that the petitioners filed an application under Section 205 of the Code of Criminal Procedure praying for exemption their personal appearance during trial but the Learned Magistrate has not disposed of the said application.

6. Mr. Kallol Mondal, Learned Advocate for the private opposite party has raised vehement objection against the submission made by the Learned Advocate for the petitioners. It is submitted by him that the petitioners on their own have decided not to appear in the Trial Court during trial.

Due to their absence trial of the case could not be concluded within the statutory period of time.

Only on three previous occasions the petitioners were compelled to appear before the Trial Court to get rid of warrant of arrest being executed. It is also submitted by Mr. Mondal that on previous two occasions the petitioners filed applications under Section 205 of the Code of Criminal Procedure and on both the occasions such application was rejected and repeated application with same relief or prayer cannot be entertained by any Court.

7. In reply, it is submitted by Mr. Dutta, Learned Advocate for the petitioners that the application under Section 205 of the Code of Criminal Procedure was filed in view of a direction passed by this Court. The Learned Magistrate was under obligation to hear out the application under Section 205 of the Code of Criminal Procedure but till date she has not passed any order upon the said application.

8. Having heard the Learned Advocate for the parties and on perusal of the impugned order dated 17th August, 2022 I record without any hesitation that the impugned order was not only happily passed but it suffers from illegality and material irregularity. Let me assign the reason.

9. Date was fixed for passing order upon an application under Section 245(3) of the Code of Criminal Procedure filed by the petitioners. The Learned Magistrate did not pass any order upon the said application which she heard on 6th July, 2022. The parties did not get any opportunity to know as to whether the complaint case is liable to be dropped by stopping further proceeding under Section 245(3) of the Code of Criminal Procedure and the accused persons would be entitled to be discharged or trial should proceed. Without passing any such order she straightway issued warrant of arrest against the petitioners. It is needless to say that on the date of passing of the order upon any application, suffice it to represent the accused persons by their authorized representative and/or Learned Advocate. The impugned order states "an attendance is lying in the Court filed by the Learned Advocate for the accused".

10. This Court fails to understand as to why personal attendance of the accused persons were insisted on 17th August, 2022 when the Learned Magistrate was supposed to pass an order upon an application under Section 245(3) of the Code of Criminal Procedure. Moreover, the impugned order suffers from material irregularity in view of the fact that during pendency of the application under Section 205 of the Code of Criminal Procedure the Learned Magistrate issued warrant of arrest against the accused.

11. Considering all such aspect as stated above, this Court is of the view that the impugned order is liable to be set aside.

12. Accordingly, the instant revision is allowed. The impugned order dated 17th August, 2022 is set aside.

13. The Learned Magistrate is directed to pass an order upon an application under Section 245(3) of the Code of Criminal Procedure within a fortnight from the date of communication of this order. On the date that will be fixed by the Learned Magistrate for passing of the order upon the application under

Section 245(3) of the Code of Criminal Procedure the accused persons shall be physically present in Court. The Learned Magistrate is further directed to dispose of the application under Section 205 of the Code of Criminal Procedure immediately after passing order on the application under Section 245(3) of the Code of Criminal Procedure.

14. It is made clear that the Learned Magistrate shall not be swayed over by any observation made while disposing of the instant application and form her own and independent opinion when disposing of the applications under Section 245(3) of the Code of Criminal Procedure and Section 205 of the Code of Criminal Procedure filed by the petitioners.

15. The instant revision is, thus, disposed of.

Petition Allowed