

C.N. Dey Vs. the State

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Court : Kolkata

Decided On : Aug-01-1988

Reported in : 1989CriLJ467

Judge : A.C. Sen Gupta and ;J.N. Hore, JJ.

Appellant : C.N. Dey

Respondent : The State

Judgement :

A.C. Sen Gupta, J.

1. This revisional application is directed against the order dated 11-11-82 passed by the learned Metropolitan Magistrate, 15th Court, Calcutta acquitting the accused persons of the charges framed against them.
2. The present petitioner who is the de facto complainant in respect of the case being aggrieved by the said order has preferred this revisional application.
3. The learned Magistrate on the basis of the complaint framed charges against the accused persons under Sections 381/114/411 of the Indian Penal Code. Witnesses were produced before him and they were examined by the prosecution. On the prayer of the accused opposite party the cross-examination of the witnesses were deferred. On the subsequent dates, the witnesses did not appear.

and on that ground, the learned Magistrate by the impugned order acquitted the accused persons by treating the prosecution case as closed and by expunging the evidence of witnesses given in examination-in-chief.

4. From the order itself it appears that no summons was issued on any of the witnesses whose evidence in examination-in-chief the learned Magistrate was pleased to expunge. Only a memo, said to have been issued by the learned Additional Public Prosecutor for procuring attendance of the witnesses was produced and it is reported that witnesses were informed over telephone to attend. On the basis of such report, the learned Magistrate was satisfied that the prosecution evidence should be treated as closed and that the same should be expunged to acquit the accused persons. To say the least it is a strange order. Such order of acquittal can never be passed before exhausting all the processes to secure the attendance of all the witnesses which the learned Magistrate failed to do, giving no cogent reason therefor.

5. The impugned order is accordingly set aside. Revisional application is allowed. The Rule is made absolute. The case is sent back to the learned Magistrate for disposal of the case according to law in the light of the observation made above.

6. Let the records be sent forthwith to the Court below.

J.N. Hore, J.

7. I agree.