

Sessions Case No. 136/2010

**Present:- Shri J.B.Biswas,
Addl. Sessions Judge,
Fast Track, First Court, Malda .**

Order No.51

28.01.13

Today is fixed for evidence .

Out of 20 accused persons,19 accused persons are present by filing haziras and one accused is absent. Rajesh Jha is absent by petition U/s 317 Cr.P.C.

Learned Special P.P is present by filing hazira together with a petition praying for rescheduling of dates of trial .

He submitted before me that no witnesses are available today and as such he submitted an application for rescheduling of the trial dates .

I/C English bazar P.S submitted his show cause containing inter alia that he was unknown to the matter as he has joined in the post of I/C on 02.01.13. It is also written in the show cause that the name of previous I/C is Jahar Jyoti Roy. He submitted that he has transferred from the post and in near future he will comply the direction. In view of the fact there is no hesitation to say that Jahar Jyoti Roy was the responsible for the disobedience of Court's order and In such inaction on the part of the then I/C Jahar Jyoti Roy to carry out the direction of the Court of Law is encouraged , the faith and confidence of the people in the Criminal Justice administration will be eroded as observed by the Hon'ble Apex Court of India in a decision reported in (2010)3 SCC(Cri) 1402. This court is under a legal obligation to book the public servant (herein the then IC EBPS) who has intentionally flouted the order of the Court and disrupted the proceeding of this case by non-production of the witnesses despite of promulgation of copy of order on several occasion . This court cannot be a passive onlooker in the fact and circumstance of the case. he should be penalized for the same and a specific complaint is required to be referred in view of provision under section 340 of Criminal Procedure Code to the Court Of Learned C.J.M. Malda against Jahar Jyoti Roy. Be that as it may be before taking drastic action an explanation is required to be called for from the then I/C Jahar Jyoti Roy. S.P Malda is directed to communicate the erring officer namely Jahar Jyoti Roy for submission of an explanation with cogent documentary proof by the next date positively and without fail in default necessary order as per previous observation will be passed against Jahar Jyoti Roy and matter shall be also referred to the Home Deptt. Govt. Of West Bengal for starting departmental proceeding against him .The explanation submitted by present I/C. appears to be sufficient and therefore it is accepted.

Another paramount consideration is in this case that despite of sending copy of order through D.I.G. and despite of direction of S.P. Malda the R.I. Malda did not submit show cause as per order dated 20.12.12. This Court strongly condemns this kind of unwarranted conduct on the part of R.I Malda who by obvious reason is trying to humiliate the Court of Justice.

The Court postulates the sorrowful picture of the District Police Administration of Malda where this type of Law not abiding police personnel like R.I.Malda is posted here ,who has overstepped the limits of Law and has also failed to comply the Order of Court and which is not in conformity with the legal principles and Constitutional means and also limitation .

This Court can not be a passive on looker in respect of the willful neglect to comply its orders dated- 04.12.2012,17.12.12,18.12.12,19.12.12 & 20.12.2012 respectively . Above all Justice is the most precious concern of mankind , inasmuch when accused persons are on the same boat and knocking the door of Justice for years together,who are entitled to get speedy Justice as embodied under Article 21 of the Indian Constitution . It is also peculiar to say that no sufficient arrangement for Law and order duty was also ensured despite of the direction of the S.P Malda..It is also clear violation of the Court's order as well as disobedience of Court's order under section 174 of Indian Penal Code. and in this nexus this court also cannot be a also a passive onlooker. Accordingly I am inclined to issue warrant of arrest against the R.I Malda and S.P.Malda is also directed to execute the same immediately after receiving the order. Compliance report must reach by the next date positively and without fail.

Considering all these above , I am inclined to allow the petition for rescheduling of the trial dates which is as follows :-

To 18.02.2013 for explanation of the then I.C, Jahar Jyoti Roy , E.R of W.A against R.I and evidence of prosecution .

To 19.02.2013, 20.02.2013 and 21.02.2013 for evidence of prosecution .

Issue summons accordingly .

Ld. Special P.P is requested to take effective steps and endeavor so that the trial of the case may not be delayed and special care and attention to be given in respect of production of alams and witnesses before the Court if any .

Present I/C Englishbazar is directed to appear with the witnesses on each date of proceeding according to the solemn Judgment reported in 2002 SCC (Cri) 230 so that the trial can be concluded by the next schedule pro-gramme.

Let a copy of this Order be sent to S.P. Malda for strict compliance.

A copy is also forwarded to I/C Englishbazar P.S for assistance for the speedy disposal of the case.

Order No. 51. (Contd.)
28.01.2013

Another copy is forwarded to Learned Chief Judicial Magistrate, Malda ,being the convener of the Monitoring Committee of this Judgeship for information and taking necessary action.

Record need not be put up on 29.01.2013, 30.01.2013 and 31.01.2013.

Accused persons are as before .

Dict. & Correct.
by me .

A. S. J

Addl. Sessions Judge,
Fast Track, First Court, Malda .