

Sessions Case No. 136/2010

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

Order No.52

11.02.13 The record is put up today on an application submitted by Shri Saibal Moitra on behalf State prosecution.

An application under section 321 of Criminal Procedure Code has been filed praying for withdrawal of the instant case on the ground stated therein together with a xerox copy of order passed by Learned Legal Remembrancer, Govt of West Bengal and a copy of order passed by Honorable Court in connection with C.R.R 3400 of 2012.

The order of Honorable Court in connection with C.R.R 3400 of 2012 reflect as follows:-

“The present petition has been filed under section 401 read with section 482 of the Code of Criminal Procedure praying that order no. 42 dated 19th September, 2012 passed by Additional Sessions Judge, Fast Track 1st Court, Malda in Sessions Case no.136 of 2010 arising out of English Bazar Police Station Case no.137 of 1997 under sections 147/148/323/379/506/302/120B IPC be set aside. Sri Sudipto Moitra appearing for the petitioner submitted that in the midst of trial special Public Prosecutor was changed and the person who has been appointed now as a special Public Prosecutor had earlier appeared for the accused and hence, interest of the petitioner/complainant will suffer as there is every likelihood that the special Public Prosecutor now appointed may act favourable to the accused. It is a well-known maxim that justice ought not to be done but should appear to have been done. In view of this, the appointment of Mr. Tarit Ojha as special Public Prosecutor is set aside. The District Magistrate, Malda within 15 days from the receipt of the certified copy of the order shall appoint a competent counsel as special Public Prosecutor. Urgent xerox certified copy of this order, if applied for, be given to the learned advocate for the petitioner on priority basis.”

It is evident that the said Revisional application has been filed by the complainant against the order no 42 passed by this Court on 19 th September 2012.

The copy of the petition has not been served to the defacto complainant who has preferred the Revisional application against the order no 42 passed by this Court on 19 th september 2012 before the Honorable Court. To ensure equitable justice the copy of the petition is required to be served to the defacto complainant in my view and the right of hearing of the defacto complainant could not be curtailed by any means as per doctrine of NATURAL JUSTICE.

To 18.02.2013 for hearing of the present petition in presence of both parties.

State prosecution is directed to serve the copy of the petition and connected copies to the defacto complainant in the mean time.

***Dictated & Corrected
by me .***

A. S. J

***Additional Sessions Judge,
Fast Track, First Court, Malda .***