

Sessions Case No. 136/2010

Present:- Shri Jimut Bahan Biswas,
Additional Sessions Judge,
Fast Track, First Court, Malda .

Order No.53

18.02.13 Today is fixed for evidence, explanation of the then I.C, Jahar Jyoti Roy , E.R of W.A against R.I and evidence of prosecution and hearing of the present petition dated 11.02.13 in presence of both parties.

Out of 20 accused persons, 18 accused persons are present by filing haziras and two accused persons namely Krishnendu Narayan Choudhury and Rajesh Jha are absent by petition U/s 317 Cr.PC. The petition under section 317 is allowed.

One xerox copy of order is filed by the defacto complainant by firisti.

On behalf of the State one Learned Advocate Mr. Saibal Mitra represents as an Empaneled PP. But up-till now no appointment letter is filed despite of several verbal directions. An adjournment petition is also filed by him stating inter alia that he did not comply the order of the Court dated 11.02.13 due to want of time and he prays for shifting the case for hearing after the ensuing election is over.

In this case there is an order of Honourable Court and

The order of Honourable 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.”

According to the order of Honourable Court passed in connection with C.R.R 3400 of 2012 no appointment letter has been received from the end of D.M Malda. So I refrain myself to pass any order as per petition dated 11.02.13 under section 321 of Criminal procedure Code submitted Shri Saibal Mitra. Let it be kept with the record due to non compliance of the order of the Court.

The then I/C of Englishbazar PS Mr Jahar Jyoti Roy submitted explanation in terms of the order passed by this Court on 28.01.2013. Let it be kept with the record and it will be considered in presence of Special PP appointed by the D.M. Malda in terms of the order passed by Honourable Court in connection with C.R.R no 3400 of 2012 and also in his presence .

Execution report of warrant against R/I Malda has been received from the end of Englishbazar PS. R/I Malda files a petition on the ground stated therein with vakalatnama.

Heard the Learned Advocate for the R/I Malda
Considered.

As he submitted the explanation in terms of the order passed by this Court on 28.01.2013 the warrant of arrest against him is only recalled.

The explanation submitted by him can not be considered at this juncture due to want of the appointment of Special PP as per the order passed by Honourable Court in connection with C.R.R no 3400 of 2012. Let it be kept with the record and it will also be considered in presence of Special PP appointed by the D.M. Malda in terms of the order passed by Honourable Court in connection with C.R.R no 3400 of 2012 and also in his presence .

Let a copy of this order together with copy of order passed by Honourable Court in connection with C.R.R no 3400 of 2012 be sent to D.M. Malda for information and taking necessary action.

Another copy of this order be sent to S.P Malda to direct the erring officers for their presence at the time of consideration of their explanation submitted today.

Strict compliance is urgently needed in the interest of Justice from D.M. Malda as well as S.P Malda .

To 05.03.2013 awaiting order from D.M.Malda , appearance of accused persons, appearance of erring officers and further order.

Dictated & Corrected
by me .

A. S. J

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