

For State : Mr. Swapan Kumar Mullick

The Court:

The present petitioner happened to be the son of Rashid Ahmad who has been facing his trial in connection with an offence punishable under Section 138 of the Negotiable Instruments Act before the Learned Judicial Magistrate, 5th Court, Sealdah.

2. It is the case of the petitioner during the pendency of the aforesaid trial, his father became mentally incapacitated and as a result, he moved an application invoking Section 329 (1) of the Code of Criminal Procedure. Although such application was filed on June 24, 2009 but since then the said application is pending. When the petitioner moved an application under Section 410 of the Code of Criminal Procedure before the Learned Additional Chief Judicial Magistrate, Sealdah for transfer of the case. However, the Learned Additional Chief Judicial Magistrate dismissed the said application ex parte. Hence, this criminal revision.

3. Now, having heard the Learned Advocates appearing on behalf of the parties and on perusing the impugned order, I find that such application of the petitioner was rejected as no step was taken by the petitioner when the same was taken up for hearing. I further find while rejecting the said application, the Learned Judge has not passed any order on merit. In such circumstances, I am not inclined to uphold such order and the same is set aside.

The Learned Additional Chief Judicial Magistrate, Sealdah is directed to dispose of the petitioner's application under Section 410 of the Code of Criminal Procedure with a reasoned order after giving reasonable opportunity of hearing to the parties in accordance with law.

The application is, thus, disposed of.

Criminal Section is directed to deliver urgent Photostat certified copy of this Judgement to the parties, if applied for, as early as possible.

(Ashim Kumar Roy, J.)