

Party Name : SMT. RUMA ROY CHOUDHURY Vs ASHIT DEB @ BHOLU & ANR

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THE HONBLE MR. JUSTICE S.TALAPATRA

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Heard Mr. A. Bhowmik, learned counsel appearing for the petitioner as well as Mr. R. Datta, learned counsel appearing for the respondent No.1 and Mr. A. Ghosh, learned counsel appearing for the respondent No.2.

This is a petition under Section 482 of the Cr.P.C. for converting the Criminal Revision Petition No.26 of 2010 to an appeal filed under Section 372 of the Cr.P.C.

Mr. Bhowmik, learned counsel for the petitioner submits that for the mistake committed by the learned counsel, instead of filing the appeal under proviso to Section 372 of the Cr.P.C. the criminal revision petition has been filed challenging the order of acquittal.

Mr. R. Datta, learned counsel for the respondent No.1 has vehemently opposed such prayer contending that the petitioner slept for 5 years without taking appropriate step. When the maintainability of the revision petition has been raised by the respondent No.1, the petitioner has filed this petition to circumvent the process of justice.

Mr. A. Ghosh, learned PP however did not raise any objection as to the conversion.

It is apparent on the face of record that the proviso to Section 372 of the Cr.P.C. has been incorporated in the statute and given effect to much before the impugned order of acquittal dated 24.02.2010 was delivered in case No.ST 57(NT/B) of 2008. It further appears to this Court that the due notice of the legislative change was not taken at the time of filing the revision petition being Crl. Rev. P. No.26(2) of 2010.

Having regard to the aspect of failure of justice, this petition stands allowed.

The Criminal Revision Petition No.26 of 2010 is converted to an appeal under proviso to Section 372 of the Cr.P.C. The Registry is directed to register it accordingly, but keeping the reference of Crl. Rev. Pet No. below for reference to the day of institution.

Mr. Bhowmik, learned counsel shall file the memorandum of appeal under Section 372 of the Cr.P.C. conforming to the requirement within 7 days from today.

Having held so, this petition stands allowed and disposed of.