

Party Name : BABULAL DAS Vs THE STATE OF TRIPURA

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THE HONBLE MR. JUSTICE S.TALAPATRA

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Heard Mr. A. Dasgupta, learned counsel appearing for the convict petitioner.

By the judgment and order dated 16.06.2015 this Court has partly allowed the revision petition being Crl. Rev. P. No.67 of 2011 by modifying the sentence in the following terms: "Having regard to all these, this Court is of the considered opinion that the petitioner shall be sentenced to suffer 2(two) months rigorous imprisonment with a fine of Rs.20,000/-, in default of payment of fine, to suffer further rigorous imprisonment for 2(two) months. The petitioner is directed to surrender within a period of 15(fifteen) days from today for suffering the sentence as awarded by this Court. If the fine money is deposited by the petitioner that shall be handed over to Smt. Madhavi Sarkar, the mother of the victim (PW-1) for the benefit of the victim. This sentence is given as the offence was committed by the petitioner before 03.02.2013 when by way of the Criminal Law (Amendment) Act, 2013, the minimum sentence has been prescribed at one year imprisonment which may extend to 5(five) years and also with a fine under Section 354 of the I.P.C."

While moving this petition filed under Section 482 of the Cr.P.C., Mr. Dasgupta, learned counsel for the petitioner has submitted that an ambiguity has emerged whether the period as undergone by the petitioner in detention from 26.05.2009 to 20.07.2009 will be set off from the term of imprisonment as per the provisions of Section 428 of the Cr.P.C., as directed by the Additional Sessions Judge, North Tripura, Dharmanagar by the judgment and order dated 22.06.2011 delivered in Criminal Appeal No.12(1) of 2011.

This Court is of the view that such petition cannot be entertained if any exercise is required to be undertaken touching the merit of the judgment except for removing apparent typing error, in view of Section 362 of the Cr.P.C. Without having any reflection on the judgment and order dated 16.06.2015 as delivered in Crl. Rev. P. No.67 of 2011, it can be held that it is the mandatory rule the detention as undergone by the convict shall be set off from the term of imprisonment as Section 428 of the Cr.P.C. provides as under:

"428. Period of detention undergone by the accused to be set off against the sentence of imprisonment.

Where an accused person has, on conviction, been sentenced to imprisonment for a term, not being imprisonment in default of payment of fine, the period of detention, if any, undergone by him during the investigation, inquiry or trial of the same case and before the date of such conviction shall be set off against the term of imprisonment imposed on him on such conviction, and the liability of such person to undergo imprisonment on such conviction shall be restricted to the remainder, if any, of the term of imprisonment imposed on him.

The provision has unambiguously provided that the term of imprisonment shall be restricted to the remainder after setting off the period of detention in the said case. Even if, in the order of sentence the setting off is not indicated that shall automatically follow.

Hence the period of detention that the petitioner has suffered during the investigation and the trial shall be set off from his term of imprisonment as indicated.

Accordingly this petition stands disposed of.

Registry is directed to send a copy of this order to the trial court by FAX in the course of the day.