

Form No.J(1)

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION**

Present:

The Hon'ble Justice Tirthankar Ghosh

**C.R.R. 1108 of 1994
(Via Video Conference)**

***Siba Prasad Chakraborty
versus
The State***

For the Petitioner : Mr. Malay Bhattacharyya.

For the State : Ms. Sukanya Bhattacharyya,
Mr. Mirza Firoj Ahmed Begg.

Heard On : 08-06-2021 & 11-06-2021.

Judgement On : 11-06-2021.

Tirthankar Ghosh, J. :

The present revisional application has been preferred against the judgement and order of conviction and sentence passed by the then learned SDJM, Bishnupur in connection with G.R. No. 39 of 1992 wherein the learned court was pleased to hold the accused person guilty

of offence under Section 7 of Cinematograph Act, 1952 and sentenced him to suffer rigorous imprisonment for three months and fine of Rs.5,000/- i.d. to suffer R.I. for one month.

Being aggrieved by such judgement and order of conviction and sentence, the petitioner preferred an appeal before the learned Sessions Judge, Bankura and the learned Sessions Judge, Bankura by a judgement and order dated 28th March, 1994 in Criminal Appeal No. 7 of 1993 was pleased to affirm the aforesaid judgement and order of conviction and sentence passed by the learned SDJM, Bishnupur.

The basic fact of the case relates to a video show being exhibited to the public in lieu of payment and without having any licence. The further allegation is that the video film which was exhibited did not bear any certification of the censor board and was pirated video cassette. On completion of investigation, charge-sheet was submitted under Section 7 of Cinematograph Act and Section 63(a) of Copy Right Act.

The accused person pleaded not guilty to the charges and as such, the trial proceeded.

Prosecution in order to prove its case relied upon eight witnesses and number of documents. Certain materials were exhibited which

included T.V. set and V.C.P. as also pirated video cassettes were tendered in evidence in connection with this case.

The learned court on an appreciation of the evidence was of the opinion that no case under Section 63(a) of the Copy Right Act has been made out and as such, acquitted the petitioner of such charges. However, the learned court was of the view that the offence under Section 7 of the Cinematograph Act, 1952 was made out and as the act of the present petitioner falls within the prescribed punishment at least minimum sentence must be imposed on the petitioner which was for a period of three months and a fine amount of Rs.5,000/- was imposed; in default, to suffer R.I. for one month.

The appellate court re-appreciated the evidence and affirmed the judgement and order of conviction and sentence so passed by the learned SDJM, Bishnupur.

I have assessed the manner in which the learned trial court and the appellate court have dealt with the evidence of the case and I find that no substantial issue is involved for interference so far as the commission of the offence by the present petitioner is concerned. As such, the order of conviction so passed by the learned trial court and the appellate court is hereby affirmed.

However, from the records it reflects that the incident is of the year 1992 and in the meantime, 29 years have passed. As such, the conscience of this Court does not permit to send the accused to custody at this stage after such a long time. In such circumstances, in exercise of power under Section 482 of the Code of Criminal Procedure, I am of the opinion that the fine amount should be enhanced.

The petitioner is directed to deposit an amount of Rs.35,000/- by way of fine with the learned ACJM, Bishnupur within a period of four weeks from date. If the said fine amount is not paid by 12.07.2021, the learned ACJM, Bishnupur would exhaust the process of law thereby reviving the earlier sentence i.e. rigorous imprisonment for three months. In case the petitioner deposits within the time period, he should be relieved from suffering any sentence and would be deemed to be treated as reduced to the sentence which has already been undergone by him.

The amount of Rs.35,000/- deposited by way of fine with the learned Magistrate, should be accepted and 90% of the fine amount should be credited to the Health department for development.

This order is restricted to the facts of the present case and will not have any binding effect.

Department is directed to communicate this order to the concerned court below.

All parties shall act on the server copy of this order duly downloaded from the official *website* of this Court.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities

(TIRTHANKAR GHOSH, J.)

dc.