

Form No. J(2)

IN THE HIGH COURT AT CALCUTTA
Criminal Appellate Jurisdiction
Appellate Side

Present:
The Hon'ble Justice Jay Sengupta

CRR 72 of 2020

D.C. PAUL GROUP CONSTRUCTION PVT. LTD.
Vs.
KIRAN RAY

For the Petitioner : Ms. Rajnandini Das
Mr. Suvam Sinha

Heard on: : 5th February 2021

Judgment on : : 5th February 2021

The Court:

This is an application challenging a judgement and order dated 04.12.2019 passed by the learned Additional Sessions Judge, 1st Fast Track Court, Bichar Bhavan, Calcutta in Criminal Revision No. 100 of 2018, thereby dismissing the revision and directing the learned trial court to re-examine the accused under section 313 of the Code afresh and to write a fresh judgement after hearing both the parties.

Affidavit of service filed on behalf of the petitioner is taken on record.

Despite service no one appears on behalf of the accused/opposite parties.

Learned counsel appearing on behalf of the petitioner submits as follows. The petitioner is the complainant in this case. After a judgement and order of conviction and sentence was passed, instead of preferring an appeal, the accused / opposite party filed a revision before the learned Sessions Court. The learned revisional Court disposed of the revision and remanded back the matter to the learned Trial Court to re-examine the accused under section 313 of the Code and, thereafter, to write a fresh judgment after hearing the parties. The learned Court failed to appreciate that the prosecution case was clearly established and there was no need to remand bank the matter to the learned trial Court. After remand, the accused are taking adjournments before the learned Trial Court.

I have heard the submissions of the learned advocate appearing on behalf of the petitioner and have perused the revision petition.

It is settled law that nomenclature of an application is not an important, but the content is. On this, a reference may be made to the decision of the Hon'ble Apex Court in the case of Pepsi Foods Ltd. & Anr. Vs. Special Judicial Magistrate & Ors., (1998) 5 SCC 749.

The Learned Sessions Court has dealt with the revisional application quite in the manner of hearing of the appeal. A breach of an established principle of law was detected and the same was set right by remanding back the matter to the learned trial court for fresh examination under Section 313 of the Code.

As such, the revisional application decided by the learned Sessions Court can fairly be treated as a petition of appeal and the impugned order may be dealt with accordingly by this Court.

I agree with the findings of the learned Sessions Judge that there is a strong chance of prejudice being caused to the accused resulting in a gross miscarriage of justice in the present case as questions were not put to the accused specifically from the inculpatory portions of the evidence on record.

The Learned Sessions Court also detected that even the form of examination of the accused under Section 313 of the Code did not contain the signature of the learned Magistrate.

Since the examination of the accused under Section 313 of the Code suffered from serious defects, learned Sessions Court was correct in setting aside the impugned order of conviction and remanding back the matter to the learned trial Court for examining the accused afresh under Section 313 of the Code and writing a fresh judgement after hearing the arguments of the respective parties.

In view of the above, I do not find any merit in this application and hence, the revisional application stands dismissed.

However, the concern of the petitioner about the delay that had already taken place in the proceeding is quite understandable.

Accordingly, I request the learned trial Court to conclude the proceeding as expeditiously as possible without granting any unnecessary adjournment to any of the parties, preferably within a period of three months from the next date of hearing.

With these observations, the revisional application is disposed of.

Urgent photostat certified copy of this order may be supplied to the parties expeditiously, if applied for.

(Jay Sengupta,J.)

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