

02.12.2021

CRA 183 of 1988

Court : 35
Item : PB-02
Matter : CRA
Status : DISPOSED OF
Transcriber: NANDY

J.A. David
Vs.
The State of West Bengal

Mr. Y.J. Dastoor, learned Additional Solicitor General
Mr. Phiroze Edulji, Advocate
Mr. Samrat Goswami, Advocate

..... for the CBI

None appears for the appellant J.A. David. It appears from the case record that several notices were sent to the appellant/convict directing him to appear before this Court. But none of such notices could be served upon him. It shows that the appellant/convict is not interested to proceed with the instant appeal.

Mr. Samrat Goswami, learned lawyer appearing for the Respondent/CBI along with Mr. Y.J. Dastoor, learned Additional Solicitor General and Mr. Phiroze Edulji, learned Advocate, submits that the Court may pass necessary order as the Court deems it proper after going through the case records.

The instant appeal has been preferred by the appellant J.A. David being aggrieved by the judgment and order of conviction and sentence passed by the learned Judge, Second Special Court, Calcutta in Special Case No. 5 of 1979.

To put briefly, the prosecution case is as under: Sovanlal Saha, a Director of Indian Record Manufacturing Company of 45, Motisil Street, Calcutta, applied for a passport in the office of the Regional Passport Officer on 24.01.1978 at Calcutta. On

the day he met the Regional Passport Officer Mr. J.A. David, the convict herein, with a visiting card of one Mrs. Lailee Saha, wife of his elder brother, Mr. Mohan Lal Saha of Indian Record Manufacturing Company. The convict was told about the urgency of the passport. The convict assured Mr. Sovan Lal Saha that he would expedite the issuance of the passport provided he was given an Amplifier for using it for an electric guitar. Ultimately the Passport was given to Mrs. Lailee Saha, wife of the elder brother of Soval Lal Saha in the middle of March 1978. But the convict reminded her of the gift he wanted.

The fact was intimated to the D.S.P., CBI, Calcutta. An Amplifier was purchased in order to give it to the convict in order to nab him while he was to take the Amplifier as a gratification. On March 17, 1978, while the convict was about to receive the Amplifier, which the signatures of witnesses, the CBI officials nabbed him.

The convict was tried for the charges under Section 161 and 165 of the Indian Penal Code as well as under Section 5(2) read with 5(1)(d) of the Prevention of Corruption Act, 1947 before the learned Judge, Second Special Court, Calcutta. On appreciation of the evidence as produced before the learned Judge, the learned trial Judge held the convict guilty of commission of the offence punishable under Section 161 of the Indian Penal Code and under Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act, 1947. However, the convict was acquitted of the charges under Section 165 of the

Indian Penal Code. He was sentenced to suffer simple imprisonment for six months for commission of offence under Section 161 of the Indian Penal Code and to suffer simple imprisonment for six months and to pay a fine of Rs.1,000/-, in default to suffer simple imprisonment for six weeks for commission of offence under Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act.

The convict assails the judgment on the ground that the judgment suffers from illegality and irregularity.

I have minutely read the judgment passed by the learned trial Judge. I have also perused the other materials-on-record.

What I find, the learned trial Judge has passed the judgment and the order of conviction and sentence recording findings which are based on proper assessment and appreciation of the evidence

As stated above, despite all endeavours made by this Court to bring the appellant on record, the appellant could not be brought on record.

Having heard the learned Counsel appearing for the respondent and in view of the above observations, I think that the appeal is liable to be dismissed. .

Accordingly, the appeal is dismissed. The judgement and the order of conviction and sentence passed by the learned Judge, Second Special Court, Calcutta in Special Case No. 5

of 1979 is hereby confirmed.

Send back the relevant case records to the learned Court below along with the copy of this order.

CRA 183 of 1988 is disposed of accordingly.

If the appellant/convict has not served out the sentence with entirety, he is directed to surrender forthwith before the learned trial Court to serve out the remaining part of the sentence, if any. If the appellant/convict fails to surrender before the learned trial Court, the learned trial Judge is at liberty to pass necessary direction or order including issuance of non-bailable Warrant of Arrest so that the appellant/ convict serve out the remaining sentence.

(Rabindranath Samanta, J.)