

18.06.2021

Item No.3
Ct.No.34
dc.

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

C.R.R. 701 of 2003
(Via Video Conference)

**M/s. Khanyan Paper Industries Limited & Ors.
versus
Biman Behari Kahaly & Anr.**

In Re: An Application filed under Section 401 read with
Section 482 of the Code of Criminal Procedure, 1973.

Mr. Sabyasachi Banerjee,
Ms. Nahid Ahmed ... For the Petitioners.

Mr. Swapan Banerjee,
Mr. Suman De ... For the State.

The present revisional application was preferred against Criminal Appeal No. 35 of 1997 by the learned Judge, City Sessions Court, 13th Bench, Calcutta wherein the learned appellate court was pleased to dismiss the appeal and held the present petitioners guilty of offences under the relevant provisions of E.S.I. Act. So far as the individuals are concerned, the learned court was pleased to sentence them to suffer S.I. for three days each and to pay a fine of Rs.5,000/- each i.d. to suffer S.I. for further seven days each. It reflects from the appellate court judgment that the learned Magistrate was pleased to impose a fine of Rs.5,000/- upon the petitioner no.1 and a direction upon the petitioner no.6 (accused no.6 before the trial court) to suffer S.I. for seven days and to pay a fine of Rs.5,000/- i.d. to suffer S.I. for further fifteen days.

As the appeal was dismissed and the learned appellate court implicated the Directors and also imposed sentence

against them, the petitioner no.1 along with its Directors and Manager approached this Court against the judgment and order of conviction and sentence passed in respect of each of them.

The period of offence referred to in the judgment passed by the learned appellate court reflects that the same was from April 1991 to September 1991 which is more than 30 years from date. The learned Metropolitan Magistrate, 15th Court, Calcutta passed its judgment on or about 05.02.1997 and on or about 27.02.2003, the learned appellate court dismissed the appeal.

Mr. Banerjee, learned senior advocate appearing on behalf of the petitioners submits that the four of the Directors, on whom sentence was imposed by the learned appellate court, were not party to the appeal and neither they were heard in course of the appeal.

In view of the irregularities pointed out by the learned advocate for the petitioners, I am of the view that no useful purpose will be served by way of remanding the appeal presently to the appellate forum. On 14.06.2021, this Court directed the petitioner no.1 to deposit a sum of Rs.60,000/- by way of compensation with the learned Chief Metropolitan Magistrate, Calcutta.

A supplementary affidavit has been filed by the petitioners enclosing a copy of the receipt in respect of the amount of Rs.60,000/- which has been deposited with the learned Chief Metropolitan Magistrate, Calcutta.

In view of the compensation amount being paid, I exercise my power under Section 482 of the Code of Criminal Procedure and discharge the accused persons as also the Company from the instant case. If any of the accused is on bail, he shall be discharged from the bail bonds.

The learned Chief Metropolitan Magistrate, Calcutta is directed to communicate with the E.S.I. authorities so that 90% of the amount so deposited in connection with this case may be forwarded to them for the development of the corpus of Employees' State Insurance. Accordingly, the revisional application being C.R.R. 701 of 2003 is partly allowed.

Rule is discharged.

Interim order, if any, is hereby vacated.

All connected applications are disposed of.

Lower court records, if any, be sent down 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.

(Tirthankar Ghosh, J.)