

AD. 13.
November 8, 2021.
MNS.

C.R.A. No. 175 of 2020
With
IA No: CRAN 1 of 2020(Old No: CRAN 3100 of 2020)
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IA No: CRAN 2 of 2020(Old No: CRAN 3101 of 2020)
+
CRAN 3 of 2020
+
CRAN 4 of 2020
+
CRAN 5 of 2021

(Via Video Conference)

Sk. Bobby @ Sk. Bobby @ Rahis Bobby
Vs.
The State of West Bengal

Mr. Milon Mukherjee,
Mr. Sandip Chakrabarty,
Mr. Arun Upaddhaya,
Mr. Prosenjit Mukherjee

...for the appellant.

Mr. Arijit Ganguly,
Mr. Sanjib Kumar Das

...for the State.

Learned senior counsel appearing for the appellant rightly points out that, reading Section 10 in conjunction with Section 374(2) of the Criminal Procedure Code, appeals only from judgments of conviction of more than seven years shall lie before this Court in the event the same is passed by an Assistant Sessions Judge. However, in the present case the sentence awarded was for imprisonment for seven years.

In his usual fairness, however, learned senior counsel also points out that there was a previous rejection by a co-ordinate Bench of an application for bail in connection with the

appeal, before which Bench the said legal point was not argued.

Be that as it may, in view of the inherent lack of jurisdiction of this Court, in view of the composite reading of Sections 374(2) and 10 of the Criminal Procedure Code, jurisdiction cannot be conferred on this Court to hear the appeal merely by virtue of a prior rejection on merit, in view of the fact that such order, even at that juncture, was passed *de hors* the jurisdiction of this Court, since the appeal is not maintainable in this Court, but has to be preferred before the competent Sessions Judge having jurisdiction; although, in all fairness, the said point was not taken at all before the earlier co-ordinate Bench rejecting the prayer for bail. In any event, the said order passed on the prayer for bail does not, in law, operate as a bar to consider the point of jurisdiction at the juncture of hearing the appeal itself.

As such, without going into the merits of the matter, the appeal is dismissed as not maintainable before this Court, with liberty to the appellant to approach the appropriate Sessions Judge at Alipore, District- South 24 Parganas with a properly constituted appeal, subject to limitation.

It is made clear that it will be open to the appellant to pray for bail/suspension of sentence in connection with an appeal, if preferred before the Sessions Judge, who will decide the same independently on its own merits and in accordance with law, without being influenced by any of the observations made herein.

Liberty is given to the learned Advocate-on-record for the appellant to take back the certified copy of the impugned judgment and sentence, upon furnishing a photocopy of the same in due process of law.

In view of dismissal of the appeal, all connected applications are also disposed of accordingly.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)