

Form No. J(2)

IN THE HIGH COURT AT CALCUTTA
Criminal Appellate Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Jay Sengupta

CRR 3422 of 2019
with
CRAN 2 of 2020

Smt. Mohua Bhattacharjee
Vs.
Sri Goutam Bhowmik & Anr.

For the Petitioner : Mr. Prabir Majumder

For the opposite party 1 : Mr. Sandeep Prasad Shaw
Mr. Anupam Some

Heard on: : 06th January 2021

Judgment on : : 06th January 2021

The Court:

This is a revisional application challenging the order dated 04.09.2019 passed by the learned Sessions Judge, Dakshin Dinajpur at Balurghat in connection with Criminal Appeal No. 04 of 2019, thereby affirming the judgement and order dated 29.05.2019 passed by the learned Judicial Magistrate, 2nd Court, Balurghat, Dakshin Dinajpur in C.R. Case No. 285 of 2017 convicting the appellant under Section 138 of the Negotiable Instruments Act, and sentencing him to

suffer simple imprisonment for one month and to pay fine of Rs.1.40 lakhs, in default to suffer further simple imprisonment for six months.

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

Learned counsel appearing on behalf of the petitioner submits as follows. The petitioner was a school teacher. She had borrowed some money for the purpose of her son's treatment that could not repay the same in time. The cheque purportedly issued by her was dishonoured. At the conclusion of trial, the learned Magistrate convicted and sentenced her to suffer simple imprisonment for one month along with fine with a default clause. Due to miscommunication with the learned advocate, the appeal preferred by her could not be moved and it was dismissed *ex parte* on 04.09.2019. There is much merit in the appeal preferred before the learned appellate Court. In the event, an appeal has to be decided on merits and cannot be dismissed *ex parte* for default. Pursuant to a direction passed by this Court, the petitioner had deposited a sum of Rs.50,000/- , without prejudice, before the learned appellate Court.

Learned counsel appearing on behalf of the complainant / opposite party submits as follows. Although, the petitioner appeared twice before the learned appellate Court, she did not further prosecute her appeal and the complainant / opposite party cannot be faulted for this. However, in the event the learned appellate Court is directed to

decide the matter on merits, the same may be done in a time bound fashion.

I have heard the submissions of the learned advocates for the parties and have perused the revision petition.

It is a settled law that an appeal has to be decided on merits and not dismissed for default.

It is apparent from the impugned order that merits of appeal were not gone into by the learned appellate Court.

In view of above and in the interest of justice, I set aside the impugned order passed by the learned appellate Court and remand back the matter to the learned Appellate Court for deciding the appeal afresh, on merits after hearing the parties. The learned appellate Court is requested to decide the appeal as expeditiously as possible without granting any unnecessary adjournment to any of the parties, preferably within six months from the date of communication of this order.

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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