

28.02.2022
S/L No.2
KS

(Via Video Conference)
C.R.A. 292 of 2020
With
IA No. CRAN 2 of 2022

Amitava Das
-Vs.-
The State of West Bengal & Ors.

Mr. Pawan Kumar Gupta
Mr. Sudip Chattopadhyay
.....For the Appellant
Mr. Ranabir Roy Chowdhury
Mr. Mainak Gupta
.....For the State

This is an application for modification and/or recalling order dated 15th November, 2021 passed by this Court in C.R.A. No.292 of 2020.

Background of the instant proceeding leading to the filing of the above application is as follows:-

The petitioner has filed an appeal which was registered as C.R.A. 292 of 2020 assailing an order dated 9th September, 2020 passed by the Learned Additional Sessions Judge, 1st Court at Howrah in connection with Sankrail Police Station Case No.749 of 2020 dated 26th August, 2020 under Section 3(II), (III) and (X) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. By passing the impugned order the Court below granted bail to the accused/opposite parties no.2 and 3.

C.R.A. 292 of 2020 was taken up for hearing on 15th November, 2021 by a judgment passed on the self-same date, this Court dismissed the appeal on the ground that if the de facto complainant is aggrieved against an order of bail, his remedy lies in filing an application under Section 439(2) of the Code of Criminal Procedure.

However, it was not pointed out that the offence complained of against the opposite parties was under Section 3(II), (III) and (X) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. Section 14A(1) of the said Act states:-

“(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an appeal shall lie, from any judgment, sentence or order, not being an interlocutory order, of a Special Court or an Exclusive Special Court, to the High Court both on facts and on law.

(2) Notwithstanding anything contained in sub-section (3) of section 378 of the Code of Criminal Procedure, 1973 (2 of 1974), an appeal shall lie to the High Court against an order of the Special Court or the Exclusive Special Court granting or refusing bail.”

In view of the special provision contained in Section 14A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 the appeal is maintainable against an order of granting bail to the accused persons.

In view of such legal position, the judgment passed in C.R.A. 292 of 2020 is required to be recalled.

There is no hesitation to record that this Court has the inherent power under Section 482 of the Code of Criminal Procedure to modify or recall an order passed without adhering to the legal provision involved in the case.

In view of the above discussion, the instant application, IA No. CRAN 2 of 2022 is allowed.

Judgment dated 15th November, 2021 in C.R.A. 292 of 2020 is recalled.

The petitioner is directed to serve a notice upon the opposite parties stating the pendency of the appeal within seven days from the date of this order and file affidavit of service within seven days thereafter.

Liberty to mention.

(Bibek Chaudhuri, J.)