

20.12.2021  
Court No.2  
Sl no. 16.  
CP

*CALCUTTA HIGH COURT  
IN THE CIRCUIT BENCH AT JALPAIGURI  
APPELLATE JURISDICTION*

**C.R.R. 165 of 2021**

In the matter of : Ranajit Chakraborty

..... Petitioner

Mr. Arijit Ghosh

... for the Petitioner.

Mr. Ashok Kumar Ghosh

... for the Union of India.

Mr. Ghosh, learned advocate appears on behalf of the opposite parties and submits that the matter may be disposed of.

This application has been filed invoking the inherent power of this court, against an order dated September 2, 2021, passed by the learned Additional District and Sessions Judge, Alipurduar, in Criminal Appeal No. 05 of 2018, arising out of C.R. Case No. 93 of 2014. The appeal was against an order of conviction passed by the learned Additional Chief Judicial Magistrate, 2<sup>nd</sup> Court, Alipurduar dated June 18, 2018. By the order impugned, the learned Additional District and Sessions Judge dismissed the criminal appeal, for default.

The order impugned is illegal and perverse. The court did not have any authority to dismiss the appeal for default. If the learned advocate for the appellant was not present before the learned court below, the court ought to have provided an

advocate to the appellant from the panel of learned advocates enlisted with the legal aid authority or the court should have appointed an amicus curiae and heard the appeal on merits.

Under such circumstances, the order dated September 2, 2021 passed by the learned Additional District and Sessions Judge, Alipurduar, is set aside. The learned court below is directed to hear out and dispose of the appeal on merits within a period of three months from the date of communication of this order.

On the first date, that will be so fixed by the learned court below, the petitioner shall appear before the learned court below along with his learned advocate. If on repeated occasions the learned advocate for the petitioner fails to appear, then the court below shall appoint an advocate to represent the petitioner and dispose of the appeal on merits.

The petitioner submits that in view of the dismissal of the appeal, the learned Additional Chief Judicial Magistrate, 2<sup>nd</sup> Court, Alipurduar issued a warrant of arrest against the petitioner. However, the petitioner is entitled to take appropriate steps in accordance with law.

Application is allowed.

There shall be no order as to costs.

Parties are to act on the server copy of this order.

**(Shampa Sarkar, J.)**