

Form No. J(2)

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION

Present:

The Hon'ble Justice Jay Sengupta

C.R.R. 1149 of 2022

Koustav Giri @ Nipu Giri @ Kaustav
-vs-
Kalipada Adak & Anr.

For the Petitioner : Mr. Kaushik Choudhury
Mr. B. Khatun

Heard on : 06.05.2022

Judgment on : 06.05.2022

Jay Sengupta, J.:

Learned counsel appearing on behalf of the petitioner submits that instead of preferring an appeal before the learned Sessions Court, a revisional application has been filed challenging the final judgement and order of conviction and sentence passed under Section 138 of the Negotiable Instrument Act because only an amount of compensation was directed to be paid along with a sentence of imprisonment for three months. Therefore, the petitioner was under the

impression that an appeal would not lie.

As it appears from the impugned order, a sum of money was directed to be paid as compensation along with an imprisonment for three months.

Section 376(b) of the Code uses the term “Metropolitan Magistrate” while in the other portions of Section 376, the expression used is “Magistrate”. Therefore, there is no scope for including the term “Judicial Magistrate” within the ambit of the expression “Metropolitan Magistrate” as used in Section 376(b), even after taking into account Section 3 of the Code.

In the instant case, the impugned judgement and order passed by a learned Judicial Magistrate. Therefore, Section 376 (b) will not apply in the present case.

In view of the above, an appeal would be maintainable before the learned Sessions Court.

In view of the above, the revisional application is dismissed.

However, petitioner shall be at liberty to prefer an appeal before the learned Sessions Court against the impugned order in accordance with law.

On the further prayer of the learned Counsel for the petitioner, the office is directed to return the certified copy of the impugned judgement and order to the learned advocate-on-record of the petitioner on usual undertaking and upon supplying a copy of the same.

Urgent photostat certified copies of this order may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

(Jay Sengupta, J.)

PM