

05.04. 2022
item No.57
n.b.
ct. no. 34

CRR 1359 of 2018

**Tapas Dutta
Vs.
State of West Bengal & Ors.**

Mr. Mrityunjay Halder
.....for the Petitioner

Ms. Anasuya Sinha,
Mr. Pinak Kr. Mitra
.....for the State

The present revisional application has been preferred challenging the Judgment and order dated 18.1.2018 passed in connection with Criminal Appeal No.53 of 2012 by the Learned Additional District & Sessions Judge, Fast Track Court, 1st Court, Calcutta.

The grievance of the petitioner is in respect of applications under Sections 91/93/310 and 391 of the Code of Criminal Procedure not being considered by the Learned Appellate Court prior to deciding the appeal.

The background of the case relates to an order of acquittal being passed by the Learned Metropolitan Magistrate, 5th Court, Kolkata in GR Case No.859 of 2005(T.R. 319 of 2006) wherein the Metropolitan Magistrate after analysing the evidence produced in support of the prosecution was pleased to acquit the sole accused persons from the charges under Section 420 of the Indian Penal Code. Being aggrieved the present petitioner preferred an appeal before the Learned Appellate Court being the Learned Chief Judge

City Sessions Court, Calcutta, the same appeal being Criminal Appeal no. 53 of 2012 was thereafter assigned to the learned Additional District and Sessions Judge, Fast Track Court, 1st Court, Calcutta and the learned Judge by Judgment dated 20.8.2013 was pleased to assign his reasons for dismissing the appeal and affirming the Judgment and order of acquittal passed by the Learned Metropolitan Magistrate, 5th Court. Kolkata. Being aggrieved by such order of acquittal the present petitioner preferred a revisional application before this Court being CRR 33 of 2014 wherein by Judgment and order dated 2.12.2015 a Co-ordinate Bench was pleased to direct the appeal Court to dispose of the application under Section 391 of the Code of Criminal Procedure and thereafter proceed with the appeal in accordance with law and dispose of the appeal within a period of six months. After the appeal was remitted back several dates were fixed before the learned Appellate Court and finally the same was disposed of on 18.1.2018. The grievance expressed by the learned advocate appearing for the petitioner is in respect of the same applications still pending.

I find that the revisional application which was preferred before the Hon'ble High Court, Calcutta directed the Appellate Court to consider and dispose of the application under Section 391 of the Code of Criminal Procedure only. The learned Appellate Court categorically observed that "Notice was issued but the appellant failed to produce any additional evidence in this regard."

So far as the second application under Section 91 of the Code of Criminal Procedure is concerned the Appellate Court also

observed that even after allowing such application no documents were produced at the instance of the opposite party no.3. Thereafter, the Appellate Court proceed to observe that the contention of the appellant is that he paid Rs.3.5 lakhs is not substantiated by any cogent document except the money receipt of Rs.1,00,000/-. It has also been observed that the burden of proof was admittedly shifted upon accused at the instance of the appellant.

Be that as it may, I do not find that there has been any scope for interfering in this revisional application against the order of acquittal as it is restricted to issues of law or facts which is on the foundation of manifest error appearing from the records of the case or any gross illegality being committed. On an assessment of the materials placed before this Court particularly, the Lower Court Records as also the Judgment and order dated 18.1.2018, I am of the opinion, that there is no scope of interference in the Judgment and order dated 18.1.2018 passed in Criminal Appeal No.53 of 2012.

As such the revisional application being CRR 1359 of 2018 is dismissed.

All pending connected applications, if any, are consequently disposed of.

Interim order, if any, is hereby vacated.

The department is directed to send back the Lower Court Records.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Tirthankar Ghosh, J.)