

02.05. 2022
item No.14
n.b.
ct. no. 34

CRR 1520 of 2021

Kishore Brata Ghosh
Vs.
Suddhochit Banerjee & Anr.

Mr. Kishore Brata Ghosh
.....petitioner-in-person.

Mr. Anirban Guhathakurta,
Mr. Abhijit Chowdhury,
.....for the opposite party no.1.

Mr. Ranabir Ray Chowdhury,
Mr. Sandip Chakrabroty
... for the State.

The present application has been preferred under article 227 of the Constitution of India challenging the Judgment and Order dated 22.3.2021 passed by the Learned 2nd Judicial Magistrate, Alipore arising out of ACGR No.12789 of 2012.

The prayers in the revision application relate to setting aside and/or quashing the Judgment and order dated 22.3.2021 and for passing a direction upon the Learned Magistrate to act in terms of Sections 66C, 66D and 67A of the Information and Technology Act, 2000.

The petitioner appearing in person files a written notes of arguments emphasizing the powers of this Court under Article 227 of the Constitution of India and overriding effect of the provisions in respect of statutory powers vested under the Code of Criminal Procedure. The authorities referred to by the petitioners are as follows:

Surya Dev Rai Vs. Ram Chander Rai & Ors. reported in (2003) 6 SCC 675(Paragraph 24 and 38), Dwarikesh Sugar Industries Ltd. Vs. Prem Heavy Engineering Works reported in (1997) 6 SCC 450,(paragraph 32), Suganthi Suresh Kumar Vs. Jagdeeshan reported in (2002) 2 SCC 420 and Himalayan Cooperative Group Housing Society Vs. Balwan Singh reported in AIR 2015 SC 2867(Paragraph 17 and 18) and Ram Deen Maurya(DR) Vs. State of U.P. & Ors. reported in (2009)6 SCC 735(Paragraph 41). So far as the first four judgments are concerned, same were passed prior to the amendment Act of 5 of 2009 (with effect from 31.12.2009) wherein the proviso clause was incorporated under the provisions of Section 372 of the Code of Criminal Procedure. The provisions of Section 372 of the Code of Criminal Procedure for the sake of convenience is set out as follows:

“372. No appeal to lie unless otherwise provided- NO appeal shall lie from any judgment or order of the Criminal Court except as provided for by this Code or by any other law for the time being in force:

Provided that the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court.”

The only ground which has been assigned by the petitioner appearing in person is speedy and efficacious remedy for not approaching the jurisdictional Court, which has been incorporated in the statute.

Mr. Guhathakurata, learned advocate appearing for the opposite party no.1 submits that the opposite party no.1 has already preferred an appeal before the Learned Sessions Judge being Criminal Appeal No.43 of 2021. The orders relating to Photostat copies of the Criminal Appeal No.43 of 2021 has been placed before this Court and the last date, in the copies reveal that the next date has been fixed on February 4, 2022.

Mr. Guhathakurta, learned advocate submits that the appeal has finally been transferred to the learned Additional District and Sessions Judge, 16th Court, Alipore for disposal and the next date is fixed on May 3, 2022.

Having regard to the statutory provisions of appeal which empowers an aggrieved party to approach the Appellate Court for cases of lesser sentence, I am of the opinion, that the provisions of Article 227 of the Constitution of India cannot be invoked in this case only for the purpose of speedy and efficacious remedy when an alternative statutory remedy is available under the statute. The authorities so cited by the learned advocate appearing in person do not apply to the set of circumstances appearing in the present case and a Criminal appeal is to be filed before the jurisdictional Court.

The first four judgments so relied upon were prior to the amendment being brought in the Code and the judgments of Ram Deen Maurya(supra) and Himalayan Cooperative Group Housing Society(supra) relied upon by the learned advocate were in respect of administrative acts and orders which has nothing to do with established procedural laws.

In view of the aforesaid observations, the petitioner has failed to make out any case for invoking the provisions of article 227 of the Constitution of India.

However, the revisional application was filed within the time before this Court and as the petitioner is appearing in person, I grant liberty to the petitioner to approach the jurisdictional Sessions Court for preferring appeal under the statutory provisions. Delay in this Case may be considered by the learned Sessions Judge in view of the fact that the revisional application was preferred within time before the Hon'ble High Court, Calcutta. In case, such an appeal is preferred before the Learned Sessions Judge, the Learned Sessions Judge will ensure that both appeals which have been preferred by the accused and on behalf of the complainant are heard by one and the same Judge. The petitioner is granted liberty to prefer such appeal within a fortnight from date before the learned appellate Court being the learned Sessions Judge 24 Parganas(South).

Accordingly, the prayers advanced in this revisional application being CRR 1520 of 2021 is dismissed with the aforesaid directions.

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

Interim order, if any, is hereby vacated.

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

(Tirthankar Ghosh, J.)