

13.07.2022

BP
Sl. 175
Court no.42.

CRR 2140 of 2022

In re: An application under Article 227 of the
Constitution of India.

In the matter of: Ashraf Ali Mondal & Ors.
...petitioners

Mr. Younush Mondal
..for the petitioners.

The petitioners are the accused persons in respect of Amdanga Police Station Case No. 236 dated 21st November, 2007 under Sections 341/325/34 of the Indian Penal Code. The said case was registered as G.R. Case No. 2244 of 2007. The trial of the aforesaid case was concluded convicting the petitioners for the offence punishable under Section 323 of the Indian Penal Code and sentencing them to suffer simple imprisonment for six months and fine of Rs. 1000/-, in default simple imprisonment for fifteen days.

The petitioners preferred an appeal. The said appeal was registered as Criminal Appeal No. 20 of 2019 before the learned Sessions Judge, North 24 Parganas at Barasat. Vide order dated 6th June, 2022 the learned Sessions Judge, Barasat dismissed the aforesaid criminal appeal for default on the ground of

non-prosecution because the petitioners failed to take any step for issuance of summons.

I am surprised to note that the learned Sessions Judge does not know that a criminal appeal cannot be disposed of on default for non-prosecution. A criminal appeal is required to be disposed of only on contest on merit. There is no provision in the Code of Criminal Procedure for dismissal of appeal for default or non-prosecution.

For the reasons stated above, I have no other alternative but to hold that the impugned order dated 6th June, 2022 is palpably illegal and cannot be sustained. Accordingly the order dated 6th June, 2022 passed in Criminal Appeal no.20 of 2019 is set aside.

The petitioners are directed to appear before the court of appeal below within 14 days from the date of this order and to file requisites for service of notice upon the respondent.

The learned trial judge is directed to dispose of the appeal on merit.

The instant revision is accordingly disposed of.

(Bibek Chaudhuri, J.)

