

Form No. J(2)

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Jay Sengupta

CRR 2263 of 2021

Akshay Sharma @ Suresh & anr.
Vs.
State of W.B.

For the Petitioner	: Mr. Ayan Bhattacharjee
	: Mr. Pawan Kr. Gupta
	: Mr. Sharegul Haque
	: Mr. Aditya Ratan Tiwary
	: Mr. Suman Majumder
For the State	: Mr. Sudip Ghosh
	: Mr. Bitasok Banerjee

Heard on: 31st March, 2022

Judgment on : 31st March, 2022

The Court:

This is an application challenging an order dated 28th September, 2021 passed by the learned Additional Sessions Judge, Fast Track Court 1, Bichar Bhawan, Calcutta in Sessions Case No. 07 of 2021 under Sections 307, 395 and

397 of the Indian Penal Code, thereby rejecting the petitioners' prayer for discharge under Section 227 of the Code.

A certified copy of the order-sheet filed on behalf of the petitioners in Court is taken on record.

Learned counsel appearing on behalf of the petitioners submits as follows. The petitioners are two of the accused in this case. On 04.02.2021, it was found that the petitioner no.2 was not represented by a learned advocate. Accordingly, the Court directed the DLSA to appoint a learned advocate to represent him. On the next date i.e., on 18.02.2021, Mr. Mihir Chakraborty, learned advocate, appeared on behalf of the petitioner no.1 as appointed by the DLSA. As a private lawyer also appeared on behalf of the said petitioner, the learned counsel for the DLSA was discharged from the case. Subsequently, the petitioner no.2 was represented by a learned advocate. On the date of impugned order, the petitioner no.1 was represented by a learned lawyer. However, no one represented the petitioner no. 2. Therefore, Mr. Mihir Chakraborty, learned advocate for the DLSA was requested to represent the petitioner no.2. On the very same day, charges were framed under Sections 307, 395, 397 read with Section 34 of the Penal Code and Section 25 (1A) of the Arms Act. It is thus evident that learned lawyer Mr. Mihir Chakraborty was

earlier engaged from the DLSA. But, he was immediately discharged from the case as a private lawyer appeared for the private opposite party. Therefore, he did not have an occasion to deal with the materials at length. It is not possible for a learned advocate, after getting appointed on a same day, to go through the materials and properly represent an accused at the time of framing of charges. On this score alone, the impugned needs to be set aside.

Learned counsel for the State submits as follows. The learned advocate for the DLSA did have occasion to deal with the case once earlier i.e. on 18.02.2021. He again represented the accused. Therefore, he had a clear idea about the case and was in a position to represent the petitioner no.2 at the time of consideration of charge. The case has now been transferred to the learned Chief Judge, City Sessions Court, Calcutta.

I have heard the submissions of the learned counsels appearing on behalf of the petitioners and the State and have perused the revision petition.

It appears that a direction was passed on 04.02.2021 by the learned trial Court to have the petitioner no.2 represented by a lawyer from the DLSA. Pursuant to this order, learned advocate was appointed from the DLSA and he appeared on the next date i.e. 18.2.2021. However, on that date, a private

lawyer was engaged by the petitioner no.2. Therefore, he was discharged from the said case.

It is debatable whether after being engaged by the DLSA, the said learned lawyer had sufficient opportunity to go through the materials on record and to remember the facts for representing the accused again after a lapse of about a year.

It is not the proper course to engage a lawyer for an accused on the date of consideration of charges and frame charges against such accused on the same day.

The petitioner no.2 has rightly claimed that he was not properly represented on the date of framing of charge.

In view of the above and in the interest of justice, the impugned order needs to be set aside and remanded back to the learned trial Judge for fresh consideration.

Accordingly, the impugned order is set aside.

The matter is remanded back to the learned Chief Judge, City Sessions Court at Calcutta, for considering the question of framing of charges against all the accused afresh after giving a proper opportunity of hearing to all the parties.

With these observations, the revisional application is disposed of.

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.)