

13.10.
2022

CRR 3842 of 2022

In re : A petition under Article 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973.

In the matter of:- Indrani Bhowmik @ Indrani Choudhury & Anr.

Md. Zohaib Rauf
.....for the petitioners

Mr. Anindya Sundar Chatterjee
Mr. Goutam Dinda
.....for KMC

Mr. Narayan Prasad Agarwala
Mrs. Manasi Roy
....for the State

The present revisional application has been preferred challenging the judgment and order dated July 30, 2022 passed by the learned Additional District and Sessions Judge, 2nd Fast Track Court, Bichar Bhawan, Calcutta in Criminal Appeal No. 47 of 2021.

At the inception it was pointed out that the appeal was heard ex parte without any audience from the appellants at whose instance the appeal was preferred.

The learned advocate appearing for the appellant drew attention of the Court to inner page 2 of the appellate court's judgment wherefrom it is reflected that none represented the appellants in course of hearing of the appeal. The finding of the learned appellate court is that an appeal is to be expeditiously disposed of on merits. However at the same time, it is a settled position of law that an appellant is

mandatorily to be heard and an appeal cannot be disposed of ex parte. It was incumbent upon the learned appellate court to engage a lawyer from the District Legal Aid Services for representing the appellant, if they were not represented during hearing of the appeal. The approach of the learned appellate court was in expeditely disposing of the appeal but at the same time it was incumbent upon the learned appellate court to ensure that some representation is made on behalf of the appellants. Henceforth it is directed that if the appellant/appellants are unrepresented in an appeal before District and Sessions Court, the learned appellate court would be at liberty to immediately engage a lawyer from the District Legal Aid Services Authorities so that they can represent the appellant(s).

Earliler Mr. Anindya Sundar Chatterjee was engaged for the Kolkata Municipal Corporation and Mr. Agarwala was directed to appear on behalf of the State.

In view of the settled proposition of law that an appeal cannot be heard ex parte, I am of the opinion that the learned appellate court should re-hear the appeal by allowing the appellants to place their case. Accordingly, the judgment and order dated 30th July, 2022 is hereby set aside. No opinion is expressed on the merits of the appeal.

The learned appellate court will provide an opportunity of hearing to the appellants in the manner as follows:-

The appellants would appear before the appellate court

on 7th November, 2022. On the said date the learned advocates for the KMC and the State also should be present. The learned appellate court would commence arguments of the appeal on 7th November, 2022 itself and fix the next dates as the court seems convenient according to its diary but the hearing must be concluded by 15th December, 2022 and the judgment be delivered on or before 22nd December, 2022.

Earlier, Mr. Rauf, learned advocate appearing for the appellants pointed out that the petitioner no. 2, namely, Indu Mouli Chowdhury has been taken into custody by way of execution of warrant of arrest in view of the appeal being dismissed.

Today a report has been submitted by the Officer-in-Charge of Beliaghata Police Station which reflects that the said contention is correct.

Let the report be kept with the record.

In view of the judgment and order of the appellate court being set aside and the appeal is required to be freshly heard before the learned appellate court, I direct that the petitioner no. 2, namely, Indu Mouli Chowdhury be released on bail by furnishing bond of Rs. 10,000/- with two sureties of like amount each to the satisfaction of the Senior Municipal Magistrate, Kolkata.

The petitioner shall be physically present on each and every day fixed by the learned appellate court including 7th November, 2022.

The warrant of arrest so issued by the learned Senior Municipal Magistrate, Kolkata which is pending so far as the petitioner no. 1, namely, Indrani Bhowmik @ Indrani Choudhury is concerned, the same be kept in abeyance till 8th November, 2022. In case, the petitioner no. 1 physically appears before the learned appellate court on 7th November, 2022, the learned appellate court would give directions for recalling the warrant of arrest to the Senior Municipal Magistrate Kolkata.

With the aforesaid observations CRR No. 3842 is disposed of.

Pending applications, if any, is consequently disposed of.

Learned Additional District and Sessions Judge, 2nd Fast Track Court, Bichar Bhawan, Calcutta as well as learned Senior Municipal Magistrate, Kolkata is directed to act on a server copy of this order, duly downloaded from the official website of this Court.

(Tirthankar Ghosh, J.)