

01-05-2023
Subha
Item no.30
Ct no.34

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction

CRR 1320 of 2021

Md. Younus & Ors.
-versus-
The State of West Bengal & Anr.

Mr. Supratick Shyamal
Mr. Md. Zahid Abedin
Mr. Aadil Sultan
....for the petitioners.

Ms. Sreyashee Biswas
Mr. Goutam Dinda
Ms. Puja Goswami
....for the KMC.

Certified copy of the Appellate Court's judgement be kept
with the record.

Learned Municipal Magistrate, 2nd court, Calcutta in
Registration Case No. 86382 of 2015 was pleased by his judgement
and order dated 14th March, 2019 to pass the following sentence
after conviction :-

"The convicts Md. Yunus, Md. Essa, Md. Sajid and Md. Azad are sentenced to suffer rigorous imprisonment for five(5) years each and convict Md. Aslam is senior citizen and suffering various medical ailments, so he is sentenced to suffer rigorous imprisonment for three (3) years and also to pay fine of Rs.50,000/- (Rupees fifty thousand only) u/s. 401(A) each of them i/d to suffer S.I for another 06(six) months each of them for committing offence punishable u/s 401A of KMC Act and they are also sentenced to suffer simple imprisonment for six(6) months each for committing of the offence punishable u/s 392/610 of KMC Act., in that case, the sentence shall meet the ends of justice and in that case all the sentences shall run concurrently. Period of detention if any already undergone during investigation and/or trial shall be set off as per u/s 428 of Cr.P.C. Let the copy of this judgement be given to the convict free of cost as per Section 363 of the Cr.P.C. the sureties are also discharged from their respective bail bonds accordingly".

Being aggrieved thereby an appeal was preferred by the appellants herein wherein the learned appellate court being the learned Additional District and Sessions Judge, 1st Fast Track Court, Calcutta was pleased to modify the sentence of the learned Municipal Magistrate, 2nd Court, Calcutta in Criminal Appeal No. 70 of 2019 to the following extent :-

“That the present Criminal Appeal being No. 70 of 2019 arising out of case No. 86382 of 2015 passed by Ld. Municipal & Metropolitan Magistrate, 2nd Court, Calcutta dated 14.03.2019 is hereby confirmed with modification as mentioned in the body of the judgement.

That the substantial part of sentenced of five years Rigorous Imprisonment is hereby reduced to TRC for each, keeping intact the rest portion of said order and judgement.

The appellants are hereby directed to appear before the court of Ld. Municipal and Metropolitan Magistrate, 2nd Court, Calcutta within 30 days here from suffer TRC and payment of fine of Rs.50,000/- each, as per order of Ld. Magistrate”.

It has been pointed out by the learned advocate for the appellants that the said order relate to the offence under Section 401A of the KMC Act.

However, the learned Municipal Magistrate’s order incorporates an imprisonment for six months in respect of the commission of offence punishable under Sections 392/610 of the KMC Act.

I have considered the judgement of the learned appellate court while dealing with the appeal and I find that so far as the reasonings are concerned, they are solely dealing with Section 401A of the KMC Act.

Having considered the absence of any observations with regard to the findings of the learned Municipal Magistrate, 2nd court,

Calcutta in respect of the sentence imposed under Sections 392/610 of the KMC Act, I am of the opinion that as sentence is an important part of a judgement, the learned appellate court would express its verdict regarding the sentence imposed by the learned Municipal Magistrate, 2nd court, Calcutta so far as it relates to Sections 392/610 of the KMC Act.

Accordingly, the revisional application is disposed of by remanding the matter for fresh consideration by the learned appellate court in respect of the views/opinion of the said court with regard to the sentence to be imposed in respect of the offences under Sections 392/610 of the KMC Act.

Needless to state that the learned trial court would be at liberty to exercise its discretion of fine or sentence as it deems fit and proper.

At the time of admission of the revisional application, a sum of Rs.50000/- was directed to be deposited. The KMC Authorities would be at liberty to withdraw the amount.

With the aforesaid observations, the revisional application being CRR 1320 of 2021 is disposed of.

Pending applications, if any, are disposed of.

The petitioners are directed to be present before the learned appellate court on 6th June, 2023.

Ms. Biswas, learned advocate appearing on behalf of the KMC is directed to send necessary instructions so that the KMC is represented before the learned appellate court on 6th June, 2023.

Learned appellate court within a period of 60(sixty) days would

dispose of the appeal in respect of the directions as stated above.

Department is directed to make necessary communications preferably within a period of 10 days to the appellate court.

All concerned parties are to act in terms of a copy of this order duly downloaded from the official website of this court.

[Tirthankar Ghosh, J]