

20.02. 2023
item No.20
n.b.
ct. no. 551

CRR 2286 of 2017

**Mrs. Bilu Bhattacharjee,
Vs.
The State of West Bengal & Anr.**

Mr. Jayanta Narayan Chatterjee,
Ms. Nandini Chatterjee,
Mr. Supreem Naskar,
Ms. Sreeparna Gjhosh,
Ms. Pritha Sinha,
Ms. Tanuja Banerjee,
Mr. Bhaskar Mondal,
... for the petitioner.

Affidavit of service filed on behalf of the petitioner be kept with the record.

Learned advocate on behalf of the petitioner submits that the instant revisional application filed under Section 397/401 of the Code Criminal Procedure read with Section 482 of the Code of Criminal Procedure preferred against the order passed by the learned Additional Sessions Judge, Fast Track 3rd Court at Alipore in Criminal Appeal No.70 of 2011 thereby setting aside the judgment and order dated 21.4.2011 passed by the Learned Judicial Magistrate, 3rd Court at Alipore and remanding back the case of the learned Trial Court.

Learned advocate for the petitioner further submits that the opposite party no.2 has preferred an application before the learned Magistrate under Section 138 of N.I. Act, against the present petitioner. The case was heard by the learned Magistrate and after hearing the learned Magistrate has acquitted the present

petitioner from this case and he has also discharges him from his liabilities. The present opposite party no.2 preferred the appeal before the Additional Sessions Judge, Fast Tract 3rd Court against the said order of acquittal. The learned Additional Sessions Judge set aside the order of acquittal and remand back the case to the learned Magistrate for retrial.

It is the submission of the learned advocate for the petitioner that the order passed by the learned Sessions Judge is without jurisdiction and the order passed by the learned Sessions Judge also not in conformity with the provisions of the Code of Criminal Procedure. He again argued that in several occasions this Court has passed the order that the order of acquittal passed by the learned Magistrate a case initiated under Section 138 of the N.I. Act cannot be preferred before the learned Sessions Judge but it must be preferred before the Hon'ble High Court. However, he cited a decision passed by this Court in CRR No.3587 of 2018 in the matter of **Ms. Todi Investors Vs. Ashis Kr. Dutta & Anr.**

Heard the learned advocate perused the judgment passed referring judgment of Apex Court in (2013) 2 SCC 2017 and Smt. P. Vijauya Laxmi Vs. Smt. S.P. Sravana, by this Court, the point of law has specifically discussed and determined in this case that "a complainant in a case under Section 138 of N. I. Act is not entitled to file an appeal against the acquittal according to the provisions of Section 372 of the Code of Criminal Procedure rather he may prefer an appeal before the order of Hon'ble High Court to invoking the provision of Section 378(4) of the Code of Criminal Procedure."

Considering the view of the Hon'ble Supreme Court and by this Court the, impugned order passed by the Learned Additional Sessions Judge appears to me illegal and in appropriate according to the provisions of the Code. Hence I find merit to entertain the instant criminal revisions application. Accordingly the instant criminal revisional is allowed. The impugned order passed by the learned Additional Sessions Judge in a criminal appeal No.70 of 2011 is hereby set aside. The order passed by the learned Magistrate, 3rd Court at Alipore in case no. C 7498/07 corresponding to T.R. 1673 of 2007 on 21.4.2011 is hereby affirmed.

Accordingly, CRR 2286 of 2017 is dispose of.

The interim order, if any, passed by this Court is also hereby vacated.

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

(Subhendu Samanta, J.)