

12.09.2023
Item No.40
gd/ssd

CRR/3328/2022
MANISH KUMAR AGARWAL
VS
SAVITRI DEVI AGARWAL

Mr. Sumanta Ganguly
..for the Petitioner

Ms. Miral Palana
..for the Opposite Party

Learned advocate appearing for the petitioner has challenged the order of the appellate court in Criminal Appeal No.53 of 2021 wherein an appeal was admitted in respect of an order of acquittal passed by the learned Magistrate under the provisions of Section 138 of the Negotiable Instruments Act.

The said appeal was admitted under Section 372 of the Code of Criminal Procedure. Number of judgments have been relied upon by the learned Additional District and Sessions Judge, Fast Track Court, Calcutta.

Having regard to the fact that the case was instituted on the basis of the complaint, I am of the opinion that there is specific provision in the Code under Section 378(4) of the Code of Criminal Procedure and the same has been decided by a Coordinate Bench of this Court in CRR 3587 of 2018. The order so passed in Criminal Appeal No.53 of 2021 on

27.07.2022 requires to be interfered with. The said order is hereby set aside.

Accordingly, the revisional application being CRR 3328 of 2022 is allowed.

Learned advocate appears on behalf of the complainant/opposite party.

Liberty is granted to the complainant/opposite party to prefer an application under Section 378(4) of the Code of Criminal Procedure. If there has been any delay, the same is due to the advice of a professional and the litigant should not suffer for the same.

Accordingly, the application under Section 5 of the Limitation Act, if any filed along with the application under Section 378(4) of the Code of Criminal Procedure be considered leniently.

Liberty to communicate this order to the learned appellate court.

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

(Tirthankar Ghosh, J.)