

20.3.2023
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SB
Ct. No.236

CRR 3541 of 2009
CRAN 2 of 2018

In the matter of : Hari Nath Prasad

Mr. Surajit Basu
Mr. Debjit Kundu ... for the petitioner

Mr. Ganesh Prasad Shaw
Mr. Gaurav Kumar ... for the O.P. 1

Mr. B.K. Ray
Ms. Manisha Sharma ... for the State

Heard the learned advocates for the parties.

This revisional application assails the judgement passed by the learned Sessions Judge, Darjeeling in Criminal Appeal No. 2 of 2009 on 07.9.2009 affirming thereby the judgement and order of conviction passed by the learned Judicial Magistrate, 2nd Court, Siliguri on 30.01.2009 in C.R. Case No. 194 of 2005.

Mr. Basu learned counsel appearing on behalf of the petitioner submits that learned Appellate Court failed to appreciate that the notice under Section 138 of the N.I. Act was issued from Siliguri by an advocate on behalf of the complainant while the entire transaction took place within the district of Jalpaiguri. The said notice also could not be served and it was returned with an endorsement 'Not Claimed'. According to Mr. Basu, learned Appellate Court ought to have held that the notice was bad in law.

Upon perusal of record, I find that this point was taken up by the petitioner / accused person before the learned Trial Court

which was disposed of on 17.11.2005. Learned Trial Court refused to accede to the prayer of the accused person. That order was never challenged by the accused person. This issue was again considered while passing the judgement by the learned Trial Court and this point was taken care of by the learned Appellate Court.

Under such circumstances, I do not find any reason to re-open the issue by disturbing the concurrent finding of the learned Court below.

Mr. Basu, as a last straw submits that a sum of Rs.2 lakhs has already been deposited in Court in compliance with the direction. According to Mr. Basu, the petitioner may not be sent to suffer imprisonment and to that extent this Court may interfere.

Mr. Shaw, learned counsel representing the opposite party no. 1 registers his objection with vehemence to such submission and according to Mr. Shaw since the case is pending for more than seventeen years, the complainant / opposite party should be adequately compensated, the accused/petitioner may not be made to suffer imprisonment. Learned Trial Court granted compensation to the tune of Rs. 2 lakhs taking into consideration the cheque amount to the tune to Rs.1,80,000/- which is inadequate. According to Mr. Gupta a sum of Rs.10 lacs may be awarded as compensation. It is submitted by Mr. Shaw, under instruction that the opposite party has withdrawn a sum of Rs.1.5 lacs deposited in Court.

Having considered the judgement impugned and facts and circumstances of the case, I am of the view that petitioner may be sentenced to suffer imprisonment for the period already undergone

subject to payment of a further sum of Rs.1.3 lakhs directly to the opposite party no. 1 within 20.4.2023, failing which learned Trial Court will be at liberty to send the petitioner to the correctional home to serve out the sentence of imprisonment imposed upon him.

Liberty is given to the petitioner to withdraw the sum of Rs.50,000/- from the Learned Trial Court, where he had deposited the said sum.

With this observation, the revisional application is disposed of along with application being CRAN 2 of 2018.

Let a copy of the order be sent to the learned Trial Court for information and necessary action.

(Siddhartha Roy Chowdhury, J.)