

CRR 4241 of 2011

In the matter of : Sushil Kumar Shaw @ Sah

Mr. Narayan Prasad Agarwala
Mr. Pratick Bose ... for the State

None is appearing on behalf of the petitioner though affidavit of service was filed on 10th August, 2022 on behalf of the petitioner. However, I do not find any reason to adjourn the matter suo motu after I am being told by Mr. Pratick Bose, learned counsel representing the State that he had taken the pains to inform learned counsel Mr. Prabir Kumar Misra, representing the petitioner that the matter would be taken up for hearing in course of the day.

This revisional application challenges the judgment passed by the learned Additional District and Sessions Judge, 3rd Fast Track Court, Bichar Bhawan, Calcutta in Criminal Appeal No. 33 of 2011. By the impugned judgment, learned Appellate Court was pleased to set aside the order of acquittal passed by learned Trial Court in G.R. Case No. 2817 of 1998 and was further pleased to direct the learned Trial Court ***“to rehear the parties and to pass a fresh judgment and upon proper reconsideration of the materials and evidence on record”***.

Briefly stated that, the appellant is one of the tenants in respect of the room No. 21 situated on the ground floor of premises No. 6B, Temple Street, Kolkata under O.P. No. 2, Ashok Kumar Raidani and others. A suit for Ejectment is pending at the behest of the landlords. In the meantime Sushil Kumar Shaw obtained a Trade License from Kolkata Municipal Corporation with the help of a rent receipt purportedly issued by the landlords acknowledging the receipt of rent for the month of March, 1995. According to the landlords, no such rent receipt was issued by either of them and the tenants had been depositing rent in the Trial Court where suit for their eviction was pending. The document was forged, manufactured and used as genuine to the benefit of accused persons.

Upon perusal of the impugned judgment I find that, learned Trial Court admitted into evidence one photo copy of the rent receipt in question as Exhibit – 13 without following the prescribed provisions as laid down under Sections 63 and 65 of the Evidence Act. The entire case was decided primarily upon consideration of a document which was otherwise inadmissible. Therefore, I endorse the view of the learned Appellate Court that this is a fit case for remand and learned Appellate Court was absolutely justified in passing the impugned judgment. Before parting with the case I would like to add that the opportunity should be given to the parties to adduce evidence if they wish to do so and thereafter learned Trial Court should dispose of the matter by following the directions given by learned Appellate Court.

With the aforesaid observation, the Criminal Revisional application being CRR 4241 of 2011 thus stands disposed of.

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

(Siddhartha Roy Chowdhury, J.)