

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

Appellate Side

Present:

The Hon'ble Justice Bibhas Ranjan De

C.R.R. 3838 of 2015

With

CRAN 2 of 2016 (Old No: CRAN 4175 of 2016)

CRAN 3 of 2017 (Old No. CRAN 67 of 2017)

Sukumar Goswami

Vs.

State of West Bengal & Anr.

For the Petitioner : Mr. Himanshu De, Adv.
Mr. Amal Krishna Samanta, Adv.
Mr. Monami Mukherjee, Adv.

For the opposite party No.2 : Mr. Prabir Mitra, Adv.
Mr. Pinak Mitra, Adv.

For the State : Mr. Prasum Kumar Dutta, APP
Mr. Pravas Bhattacharya, Adv.
Mr. M.F.A Begg, Adv.

Heard on : July 17, 2023

Judgment on : July 25, 2023

Bibhas Ranjan De, J.

1. The Judgement dated 04.09.2015 passed in Criminal Appeal no. 4 of 2012 passed by Ld. Additional Sessions Judge, Paschim Medinipur is challenged in this revision application.
2. By the impugned judgement Ld. Additional Sessions Judge, passed an order remanding back to the Ld. Additional Chief Judicial Magistrate, Ghatal, in connection with GR Case no. 260 of 1995 setting aside the judgment and order of acquittal dated 06.01.2012 passed by Ld. Additional Chief Judicial Magistrate, Ghatal with a direction to ensure the attendance and examination of Investigation Officer and Medical Officer.
3. One application under Section 156(3) of the Code of Criminal Procedure (hereinafter referred to as CrPC) was filed by the opposite party no. 2 on 16.09.1995 for an alleged incident of assault by the petitioner. On receipt of that complaint Chandrakoknal Police Station case no. 83/95 dated 17.10.1995 under Section 323/354/379 of the Indian Penal Code was started against the accused including the petitioner and charge sheet was submitted

after investigation and accused were discharged from the case on 16.09.1999. At the instance of opposite party no. 2 one revision application was filed before the Ld. Sessions Judge, being Criminal Revision No. 141 of 2002 and said revision application was rejected by the Ld. Sessions Judge, on 29.11.2007. Being aggrieved opposite party no. 2 again preferred revisional application before this Hon'ble High Court against order dated 29.11.2007 and this Court remanded back on 08.04.2009 for retrial. After trial Ld. Additional Chief Judicial Magistrate acquitted accused by the judgement and order dated 06.01.2012. Being aggrieved *de facto* complainant (op no. 2) filed an appeal before the Ld. Sessions Judge assailing the judgement and order of acquittal dated 06.01.2012. Thereafter, Ld. Sessions Judge, by the impugned judgment and order dated 04.09.2015 remanded back the matter to the Ld. Additional Chief Judicial Magistrate, Ghatal for examination of Investigation Officer and doctor.

4. Being aggrieved by and dissatisfied with the said judgment and order dated 04.09.2012 the instance revision application has been preferred.

5. Ld. Advocate, Mr. Himanshu De, appearing on behalf of the petitioner has drawn my attention to the evidence of witnesses (PW1 to 6) and submitted that evidence of injured (PW1) was not corroborated by any of the so called eye witness. He has further submitted that incident alleged in this case took place on 09.09.1995 but the complaint 156(3) was filed on 16.09.1995 and jurisdictional police station started case on 17.10.1995, such delay, According to Mr. De is fatal to the prosecution.
6. Mr. De, in support of his contention relied on a cases of ***Madhavrao Jiwajirao Scindia and Ors. V. Sambhajirao Chandrojirao Angre and Ors.*** reported in ***(1998) 1 SCC 692***, ***Munna Lal Vs. State of Uttar Pradesh*** reported in ***(2023) SCC Online SC 80***, ***Abdul Rehmn Antulay Vs. R.S. Nayak*** reported in ***(1992) 1 SCC 225***, ***Raj Kumar Singh @ Raju @ Batya Vs. The State of Rajasthan*** reported in ***(2013) 5 SCC 722***, ***Jarnail Singh Vs. State of Punjab*** reported in ***(2009) 9 SCC 719***, ***Mahendra Singh and Ors. Vs. State of Madhya Pradesh*** reported in ***(2022) 7 SCC 157*** & ***Kali Ram Vs. State of H.P.*** reported in ***(1973) 2 SCC 808***.

- 7.** Ld. Advocate, Prabir Mitra, appearing on behalf of the opposite party no. 2 has submitted that even an evidence of single witness, if believable, can sustain conviction. It has been further submitted that evidence of Investigating Officer and doctor was very much vital while witnesses were examined in terms of statement recorded by the Investigation Officer under Section 161 of the CrPC. That apart, doctor examined the injured after the incident.
- 8.** Ld. Advocate, Mr. Pravas Bhattacharya, has submitted that delay was caused in this case due to filing of successive revision application by the Petitioner. Mr. Bhattacharya supported the judgment and order dated 04.09.2015 passed by the Ld. Additional Session Judge, Pachim Medinipur.
- 9.** Revisional jurisdiction of the High Court cannot be equated with appellate jurisdiction in its revisional jurisdiction. The High Court can examine the records of any proceedings for satisfying itself as to the correctness, legality or propriety of any finding, sentence or order. Therefore, High Court in exercising revisional jurisdiction can only appreciate as to any illegality or infirmity in the order impugned.
- 10.** Here in this case, Ld. Additional Chief Judicial Magistrate transferred the case to his own file only on

03.07.2009 fixing 11.08.2009 for appearance on 06.08.2011 Ld. Magistrate examined the accused under Section 251 of the CrPC and fixed on 01.09.2011 for evidence. Summons were issued time to time and examined 6 witnesses till 28.12.2011 and on that day Ld. Magistrate fixed a date (06.01.2012) for evidence of Investigation Officer in default examination of accused under Section 313 CrPC and issued summons accordingly. On 06.01.2012 Ld. Magistrate closed the evidence and after examining accused under Section 313 of the CrPC delivered judgment and order of acquittal.

11. Ld. Sessions Judge, by the impugned judgment found it necessary for examination of Investigation Officer and doctor for proper disposal of the case.

12. Ld. Judge, returned his finding to the effect that Ld. Magistrate ought to have taken steps to secure attendance of Investigation Officer before the Court instead of closing evidence on 06.01.2012 fixing evidence of Investigation Officer.

13. In ***Madhavrao Jiware & Abdul Rehman Antulay*** (supra) Hon'ble Apex Court dealt with quashing of the proceeding.

14. In ***Munna Lal*** (supra) dealt with non-examination of Investigation Officer in separate prospective unlike our case.
15. In ***Raj Kumar Singh*** (supra) dealt with purpose of examination of accused.
16. ***Sing & Narendra Sing*** (supra) dealt with appreciation and creditability of witness.
17. In ***Kaliram*** (supra) burden of proof, presumption and appreciation of evidence were dealt with.
18. In our case, Ld. Judicial Magistrate, appreciated the evidence of witness examined prior to 28.12.2011 only when Investigation Officer was summoned by the Court. In the case, Ld. Magistrate did not take any steps to secure attendance of Investigating Officer and Medical Officer before the court for proper appreciation of entire evidence before coming to final verdict. In this case, Ld. Magistrate issued summon to Investigating Officer on 28.12.2011 asking him to appear on 06.01.2012 but instead of passing order to secure his attendance Ld. Magistrate closed the evidence, examined accused under Section 313 of the CrPC and delivered judgment on the same day i.e. on 06.01.2012.

- 19.** For the reasons, I am unable to find out either any illegality or impropriety to interfere with the impugned judgment.
- 20.** Thus, the revision application being no.CRR 3838 of 2015 Stands dismissed.
- 21.** Pending applications also stands disposed of.
- 22.** Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]