

19.07.2024
SL. 117
Court No. 551
Suvayan

C.R.R. 7 of 2011

In re: An application under Section 482 read with Section 401 of the Code of Criminal Procedure, 1973.

And

In the matter of: **Saumit Auddy**

....petitioner.

Mr. Sourav Sen
Mr. Muhammad Obaid

...for the petitioner.

Ms. Suchismita Dutta

...for the opposite party.

1. The legality, propriety and the correctness of the Order No. 25 dated October 1, 2010 as passed in Criminal Appeal No. 69 of 2009 by the learned Chief Judge, City Sessions Court at Calcutta is the subject matter of the instant revisional application.
2. By the impugned order the learned first appellate court dismissed Criminal Appeal No. 69 of 2009 and thereby affirmed the order dated September 11, 2009 as passed learned Metropolitan Magistrate, 13th Court at Calcutta in Case No. 1921 of 2009 in a proceeding under the protection of women from Domestic Violence Act, 2005 (hereinafter referred to as 'D.V. Act' in short) by which the opposite party/wife's application under Section 12 of the said Act was allowed by the Trial Court.
3. In support of the instant revisional application Mr. Sen, learned Advocate for the revisionist/husband at the very outset draws attention of this Court to Para 10 of the instant

revisional application. Attention of this Court is also drawn to Page 33 being the certified copy of the daily cause list dated September 9, 2010 of the Court of learned Chief Judge, City Sessions Court at Calcutta. It is submitted that from the said cause list dated September 9, 2010 of learned Chief Judge, City Sessions Court at Calcutta it would reveal that Criminal Appeal No. 69 of 2009 was fixed on November 11, 2010 for service return, appearance, arrival of the Lower Court Record. Drawing attention to the impugned order it is submitted that from the impugned order it would reveal that such an order has been passed on October 1, 2010 and that too in absence of both the parties of the said appeal.

4. It is contended by Mr. Sen that from the cause list dated September 9, 2010 it would reveal that Criminal Appeal No. 69 of 2009 was not posted on October 1, 2010 and on the contrary the same was posted on November 11, 2010 which is why both the appellant and the respondent of the said Criminal Appeal No. 69 of 2009 was misled and both the parties could not be represented on the day of passing of the impugned order.
5. Learned Advocate for the opposite party/wife, however, contends that there cannot be any justification to interfere with the order impugned since the appeal has been disposed of by the learned first appellate court on merit.
6. After giving due consideration over the materials as placed before this Court and after hearing the learned Advocates for the contending parties it appears to this Court that

admittedly from the cause list dated September 9, 2010 it would reveal that Criminal Appeal No. 69 of 2009 was fixed on November 11, 2010, however, for the reason best known to the learned first appellate court the said appeal was taken on October 1, 2010 that too in absence of both the parties. It thus appears to this Court that a very crucial right of '*audi alteram partem*' as well as the principles of the natural justice has been violated for not giving due opportunity of hearing to the parties to the said appeal.

7. Accordingly, the instant revisional application being CRR 7 of 2011 is hereby allowed.
8. Consequently, the impugned Order No. 25 dated October 1, 2010 as passed in Criminal Appeal No. 69 of 2009 by the learned Chief Judge, City Sessions Court at Calcutta is hereby set aside.
9. Considering that the matter is very old, this Court in exercise of its power under Section 407 Cr.P.C. directs the learned Chief Judge, City Sessions Court at Calcutta to transfer the case record of Criminal Appeal No. 69 of 2009 to the file learned Judge, Bench No. 1, City Sessions Court at Calcutta with immediate effect and positively by July 31, 2024. The transferee Judge on receipt of the case record of Criminal Appeal No. 69 of 2009 shall fix a date of hearing of the said appeal within a fortnight thereafter and the said transferee Judge shall dispose of the Criminal Appeal No. 69 of 2009 within a month from the date of receipt of the case record of the aforesaid criminal appeal.

10. Since both the parties are represented today by their learned Advocates. This Court directs both the appellant and the respondent of the Criminal Appeal No. 69 of 2009 to appear before the learned Judge, Bench No. 1, City Sessions Court at Calcutta either in-person or through their learned advocates positively on August 1, 2024 at 10.30 a.m.
11. Department is directed to forward a copy of this order along with L.C.R., if received, in the meantime forthwith.
12. Both the parties, learned Chief Judge, City Sessions Court at Calcutta and learned Judge, Bench No. 1, City Sessions Court at Calcutta are directed to act on the server copy of this order.
13. Liberty is given to the parties to communicate this order to the courts below.
14. Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all the necessary formalities.

(Partha Sarathi Sen, J.)

