

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
Appellate Side**

Present:

The Hon'ble Justice Ajay Kumar Gupta

**C.R.R. 548 of 2017
With
CRAN 1/2017 (Old CRAN 4407/2017)**

**Srikumar Das
Versus
The State of West Bengal & Anr.**

For the State : Mr. N.P. Agarwal, Adv.
Mr. Pratick Bose, Adv.

Heard on : 12.12.2023

Judgment on : 05.01.2024

Ajay Kumar Gupta, J:

1. This instant revisional application has been filed by the petitioner under Section 401 read with Section 482 of the Code of Criminal Procedure, 1973 seeking quashing and/or setting aside the

impugned order No. 45 dated 25th November, 2016 passed by the Learned Additional District Judge, Fast Track, 3rd Court, Basirhat, North 24-Parganas in connection with Criminal Appeal No. 1 of 2011 thereby the criminal appeal has been dismissed for default due to non-appearance on behalf of the petitioner and further confirmed the judgment and order dated 4th December, 2010 passed by the Learned Additional Chief Judicial Magistrate, Basirhat, North 24-Parganas in connection with Complaint Case No. 92/2005 whereby and wherein petitioner was convicted and sentenced to simple imprisonment of one year and a fine of Rs. 5000/- each in default further simple imprisonment for another six months.

2. The brief facts of this case are relevant for the purpose of disposal of the instant case as follows:

One Badal Debnath, Forest Range Officer lodged a written complaint before the learned Chief Judicial Magistrate at Basirhat stating inter alia that he along with other staff received information from a reliable source that the accused persons possessed Indian Soft-Shelled Turtle without having any valid document or permit as such they conducted a raid at Nazat Bazar. Then it was found that the petitioner and the proforma opposite party no. 3 were in possession of 46-No. Indian Soft-Shelled Turtle without having any valid document or permit. They were arrested, prepared seizure list

and recorded their statements and brought before the learned Chief Judicial Magistrate at Basirhat on 5th February, 2005. A complaint case no. 92/2005 was registered under Sections 9/49/40(2)/49(B)/50 of the Wild Life (Protection) Act, the offences as mentioned hereinabove is punishable under Section 59(a) of the Wild Life (Protection) Act, 1972. Cognizance was taken and trial was concluded and finally a judgment was passed by the learned Magistrate and whereby petitioner and proforma opposite party no. 3 found guilty for committing offence punishable under Section 51(1) of the Wild Life (Protection) Act, 1972 and they were convicted and sentenced them to suffer a simple imprisonment of one year with a fine of Rs. 5000/- for each and in default, further six months simple imprisonment under Section 248(2) of the Code of Criminal Procedure, 1973.

Feeling aggrieved with the aforesaid judgment and order, petitioner had filed an appeal before the learned Additional District Judge, Fast Tract, 3rd Court, Basirhat, North 24-Parganas on the ground that the Ld. Trial Court failed to appreciate the evidence adduced by the prosecution and further no appropriate procedure was followed while examining the accused person under Section 313 of the Code of Criminal Procedure. Which is completely miscarriage of justice. As such the judgment and order passed by the trial court is

liable to be set aside. It is contended that the said appeal was dismissed for default on 25th November, 2016, when the learned advocate for the petitioner found absent on repeated call although made no fault on the part of the appellant/convict. Accordingly, the said impugned order is liable to be set aside.

SUBMISSION ON BEHALF OF THE PETITIONER:

3. Nobody appeared on behalf of the petitioner on call on the date of hearing and even on earlier occasions no one represented the petitioner nor any accommodation sought for.

SUBMISSION ON BEHALF OF THE STATE:

4. Mr. N.P. Agarwal, the learned Counsel appearing on behalf of the State filed a status report and further submitted that no warrant of arrest was issued against the accused persons till date and next date has been fixed by the learned Trial Court on 29.01.2024. It is further submitted that this Court has earlier on 21.02.2017 suspended the sentence in the instant case for a period of six weeks on condition that the petitioner will appear before the Ld. Trial Court within a fortnight and upon his appearance the petitioner shall be released on bail to the satisfaction of the Ld. Trial Court till the disposal of this application and if the petitioner failed to appear before the Ld. Trial Court, interim order shall automatically vacate

without reference to this Court and Trial Court shall be at liberty to execute the sentence against the petitioner. In spite of such direction, the petitioner did not appear before the Ld. Trial Court as such the interim order passed by this court has already been expired. No warrant of arrest has been issued as yet against the convicts as such application is liable to be set aside.

5. It is further submitted that the learned Additional District Judge, Fast Track, 3rd Court, Basirhat, North 24-Parganas rightly dismissed the appeal for default on 25.11.2016 as the appellants/victims took no steps on the date fixed for hearing. Learned advocate for the appellants/victims also found absent on repeated call. Petitioner further not complied the order passed by this Hon'ble High Court as such instant application is liable to be dismissed.

DISCUSSIONS AND FINDINGS OF THIS COURT:

6. Having heard the submission of the Learned counsel appearing on behalf of the state and on perusal of the record and annexures thereto, it appears that the petitioner was found guilty for committing offence punishable under Section 51(1) of the Wild Life (Protection) Act, 1972 and accused persons were convicted and sentenced to simple imprisonment of one year and a fine of Rs.

5000/- each in default further simple imprisonment for another six months.

7. Being aggrieved and dissatisfied with the said conviction and sentence, the petitioner herein had filed an appeal before the Learned District and Sessions Judge and the same was transferred to the Learned Additional District and Sessions Judge, Fast Track, 3rd Court Basirhat (North) 24 Parganas for its disposal. However, on the date of hearing neither steps were taken by the appellants before the Appellate Court nor learned advocate for the appellants/victims was found present on repeated call. As such, the same was dismissed for default on 25.11.2016 and further directed the appellants/victims, namely, Subhas Das and Srikumar Das to surrender before the Ld. ACJM at Basirhat to serve out to sentence in terms of judgment and order dated 14.12.2010 passed by the Ld. ACJM at Basirhat in case no. 92/2005 within one month from the date of communication of this order, if these convicts did not surrender before the Court of Ld. ACJM at Basirhat within stipulated period, Ld. ACJM is directed to take appropriate steps against the convicts to serve out the sentence.

8. One of the convicts, Srikumar Das filed this present revisional application praying for setting aside the impugned order passed by the Ld. Additional District and Sessions Judge, Fast Track, 3rd Court, Basirhat, North 24-Parganas and prays for direction to the

Ld. appellate court to hear and disposed of the appeal after giving opportunity of hearing to the petitioner.

9. At the time of admission of the revisional application, this Court suspended his sentence for a period of six weeks on 21.02.2017 subject to condition that the petitioner shall appear before the learned Trial Court within a fortnight and upon his appearance the petitioner shall be released on bail to the satisfaction of the Ld. Trial Court till disposal of this application with a default clause that if the petitioner fails to appear before the Ld. Trial Court, the interim order shall automatically be vacated without reference to this Court and Trial Court shall be at liberty to execute the sentence against the petitioner at the time of admission of revisional application.

10. Upon further perusal of the status report, it appears they did not take any steps before the trial Court in pursuant to the aforesaid orders. The Trial court also not issued warrant of arrest against them to secure his/their attendance before the trial court to serve out the sentence. Furthermore, the petitioner also not turned up on the date of hearing before this Court to ventilate his grievances. Learned Additional District Judge, Fast Track, 3rd Court, Basirhat, North 24-Parganas dismissed the appeal for default on 25.11.2016 as the appellants/victims took no steps on the date fixed for hearing.

Learned advocate for the appellants/victims also found absent on repeated call. The conduct of the petitioner is not appreciable as he even did not comply the direction passed by this court. Consequently, it seems petitioner is not at all interested to proceed with the case. This court also does not find any infirmity or error in deciding the case by the trial court. Accordingly, revisional application has devoid of merit.

11. Consequentially, the instant revisional application being **CRR 548 of 2017** is thus dismissed without order as to costs.

12. Ld. ACJM is directed to take all recourse to ensure attendance of the convicts to serve out the sentence.

13. In view of dismissal of this case, connected application being **CRAN 1/2017 (Old CRAN 4407/2017)** is also disposed of.

14. Interim order, if any, shall be vacated.

15. Let the copy of this judgment and order be sent to the learned Court below for information and taking necessary action.

16. Parties shall act on the server copies of this order uploaded on the website of this Court.

17. Urgent photostat certified copy of this judgment, if applied for, is to be given as expeditiously to the parties on compliance of all formalities.

(Ajay Kumar Gupta, J)

P. Adak (P.A.)