

27.06.2024

SL. 129
Court No.
551
Sourav

C.R.R. 1857 of 2012

In re: An application Under Article 227 of the Constitution of India.

And

In the matter of: **Sri Krishna Kanta Barman & Anr.**

... petitioners.

Mr. Saryati Datta

...for the petitioners.

Mr. Bidyut Kumar Roy

... for the *Amicus Curiae*.

1. The revisionists are represented by Mr. Saryati Datta, learned advocate appointed through Calcutta High Court Legal Services Committee.
2. Since, the opposite party no. 1 is not represented today, this Court requests Mr. Bidyut Kumar Roy, learned advocate to represent the opposite party no. 1 as *amicus curiae*.
3. This Court has heard Mr. Datta, learned advocate for the revisionists and Mr. Roy, learned *amicus curiae*.
4. The present revisional application is now taken up for passing appropriate order.
5. The legality, propriety and the correctness of the judgment dated 23.02.2012 as passed by the learned Sessions Judge, Cooch Behar in Criminal Appeal No. 17 of 2011 has been assailed in this criminal revision. By the impugned judgment, learned Sessions Judge, Cooch Behar while disposing the said appeal upheld the judgment of conviction and order of sentence as passed by learned Additional Chief

Judicial Magistrate, Dinhata, Cooch Behar in C.R. Case No. 53 of 2009.

6. It is pertinent to mention herein that in the said C. R. case learned ACJM, Dinhata found the present revisionists guilty of the offence under Section 19A of the West Bengal Land Reforms Act, 1955 (hereinafter referred to as 'the said Act') and thus, convicted them under Section 255(2) Cr.P.C. and sentenced them to suffer imprisonment for five months and to pay fine of Rs. 4,000/- each i/d to suffer imprisonment for 15 days.
7. In course of his argument, Mr. Datta, learned advocate for the petitioner submits before this Court that the first appellate court while disposing the Criminal Appeal No. 17 of 2011, has failed to consider that in C.R. Case No. 53 of 2009, the complainant has miserably failed to prove beyond reasonable doubt that the accused persons of the said complaint case are the 'bargadars' in respect of the land in question and, therefore, the first appellate court ought to have held that there is no obligation on the part of the present revisionists to pay the share of produce to the complainant who claimed to have been the owner of the land in question.
8. It is further argued that the first appellate court has also miserably failed to appreciate the evidence of the witnesses as adduced on behalf of the complainant in its proper perspective. Mr. Datta further submits before this Court that the learned first appellate court also failed to visualize

that the punishment awarded by the learned trial court is not commensurate to the offence allegedly committed by the present revisionists.

9. Per contra, Mr. Roy, learned *amicus curiae* submits before this Court that both the first appellate court and the trial court have come to a concurrent finding that before the 'vagchas' officers, it has been established beyond reasonable doubt that the present revisionists are the 'bargadars' and they are bound to deliver the share of produce and/or its equivalent costs to the complainant being the 'rayat' of the land in question. It is further submitted by Mr. Roy that there occurred no error of fact or of law in appreciating the evidence either on the part of the trial court as well as on behalf of the first appellate court.
10. On perusal of the entire materials as placed before this Court and after hearing the learned advocates for the contending parties, it reveals that materials have been placed before this Court that the present revisionists who are the accused before the learned trial court were cultivating the land of the complainant as 'bargadars' after the death of their predecessors-in-interest and before the 'vagchas' officers, it has been decided that the present revisionists have to pay a certain sum of money to the complainant being the cost of share of produce.
11. On perusal of the judgment as passed by the learned trial court as well as by the first appellate court, it further appears to this Court that no materials have been placed

before the trial court that the present revisionists have either complied with the said order of the 'vagchas' officers' order or they have preferred an appeal before any higher forum against the said order and obtained an order of stay.

12. In considered view of this Court, learned first appellate court also rightly observed that the revisionists before the learned trial court have miserably failed to show any document in compliance of the order of 'vagchas' officers under Section 18(1) of the said Act.
13. In view of such, this Court finds no infirmity and/or illegality in the order impugned. However, considering the facts and circumstances of the instant case, it appears to this Court that the punishment as imposed by the learned trial court is bit harsh and not commensurate with the gravity of the offence as committed by the present revisionists.
14. In view of such, while dismissing the instant revisional application, this Court alters the sentence of the present revisionists as passed in connection with the C.R. Case No. 53 of 2009 by the learned ACJM, Dinhata, Cooch Behar in the manner indicated hereinbelow.
15. The present revisionists being convicts, Sri Krishna Kanta Barman and Sri Amaresh Chandra Roy are sentenced to pay fine of Rs. 500/- each i/d to suffer imprisonment for one month in connection with C.R. Case No. 53 of 2009 as disposed of by learned ACJM, Dinhata, Cooch Behar.
16. It is further ordered that the fine amount as assessed by

this Court shall have to be deposited by the present revisionists either directly to the complainant, Smt. Manika Roy or in the judicial cash positively within a month from the date of communication of this order.

17. With the aforementioned observations, the instant revisional application being **CRR 1857 of 2012** is disposed of.
18. Before parting with, this Court must not be forgetful to convey sincere thanks both to Mr. Datta and Mr. Roy for their able assistance in disposing of the revisional application.
19. Department is hereby directed to forward a copy of this order along with the LCR to the learned trial Court forthwith.
20. Department is also directed to forward a copy of this order also to the Secretary, Calcutta High Court Legal Services Committee who on receipt of the same, shall take appropriate steps to pay honorarium to Mr. Bidyut Kumar Roy, learned *amicus curiae* as per his entitlement considering his length of practice after regularizing his appointment.
21. Urgent photostat certified copy of this order, if applied for be given to the parties, upon compliance of necessary formalities.

(Partha Sarathi Sen, J.)

