

Form No. J(2)

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
Appellate Side

Present:
The Hon'ble Justice Partha Sarathi Sen

C.R.R. 1912 of 2012

Narayan Prasad Saraf
-vs-
The State of West Bengal & Anr.

For the Petitioners	: Mr. Saryati Datta
For the State	: Mr. Bidyut Kumar Roy Ms. Rita Dutta
Heard on	: 14.6.2024
Judgment on	: 14.6.2024

Partha Sarathi Sen, J.:

1. Heard learned advocate for the petitioner and for the State in favour of and against the instant revisional application. The present case is now taken up for passing appropriate order.

2. In this application as filed under Section 401 read with Section 482 of the Code of Criminal Procedure, the revisionist/accused has

challenged the legality, propriety and correctness of the judgment dated 31.3.2012 as passed by the learned Additional Sessions Judge, First Track, 5th Court, Bichar Bhavan, Kolkata in Criminal Revision no. 194 of 2011 whereby and whereunder the said revisional court while allowing the said criminal revision set aside the judgment of acquittal of the present revisionist as passed by the learned Trial court on 29.04.2011 in GR case no. 896 of 1999 in a case under Section 323/504/506 of the Indian Penal Code and directed the learned trial court to decide the said GR case afresh on the basis of the evidence of the prosecution witnesses already adduced.

3. In course of hearing, Mr. Dutta, learned advocate for the petitioner at the very outset draws the attention of this court to the annexure P/4 of the instant petition being the photocopy of the judgment dated 29.04.2011 as passed by the learned trial court in aforesaid GR case. Attention of this court is also drawn to the certified copy of the impugned judgment as passed by the revisional court on 31.3.2012.

4. It is submitted by Mr. Dutta, learned advocate for the petitioner that from the last paragraph of internal page 9 of the certified copy of the impugned judgment, it would reveal that it was the finding of the learned first revisional court that the learned trial court while passing the judgment dated 29.04.2011 in GR case no. 896 of 1999 had not considered the oral and documentary evidence, as tendered by the prosecution witnesses and the said judgment dated 29.04.2011 is

merely a replica of the previous judgment dated 25.11.2009 as passed by the said trial court which was however set aside by a coordinate bench of this Court.

5. Mr. Dutta further submits that from page nos. 2 and 3 of the judgment dated 29.04.2011 as passed in GR case no. 896 of 1999, it would reveal that the learned trial court while passing the said judgment duly considered the pros and cons of the depositions adduced by the prosecution witnesses and thus it has come to a logical conclusion that the prosecution has failed to prove the charges under Section 323/504/506 of the Indian Penal Code. It is further submitted by Mr. Dutta that while passing the impugned judgment dated 29.04.2011, learned trial court also noticed discrepancies with regard to the evidence adduced by the PWs and the said trial court also noticed some material omissions in the evidence of the prosecution witnesses. It is further submitted by Mr. Dutta that while passing the impugned judgment dated 31.3.2012, learned first revisional court mechanically observed that the impugned judgment before the said first revisional court is mere replica of its earlier judgment which is a wrong finding and for which the instant revisional application may be allowed. Mr. Dutta further submits that the learned first revisional court also failed to consider that the revisionist before the first revisional court has miserably failed to point out any glaring cases of injustice which occurred on account of non-

consideration of the material evidence and/or on account of violation of fundamental principle of law.

6. Mr. Dutta, learned advocate for the revisionist thus submits that it is a fit case for allowing the instant revisional application by setting aside the judgment impugned and by upholding the judgment dated 29.04.2011 as passed by the learned trial court in GR case no. 896 of 1999.

7. Per contra, Mr. Roy, learned advocate for the State however submits that there is no illegality and/or irregularity in the impugned judgment since the first revisional court had rightly noticed that while writing the impugned judgment dated 29.04.2011, learned trial court has failed to appreciate the evidence of the prosecution witnesses in its proper perspective for which the instant revisional application as filed before this court deserves to be dismissed.

8. This court has meticulously gone through the judgment dated 29.04.2011 as passed by the learned trial court in GR case no. 896 of 1999 as well as the certified copy of the impugned judgment dated 31.3.2012 as passed by the learned first revisional court. This court has given its anxious consideration over the submissions of the learned advocates for the contending parties.

9. On perusal of the entire materials as placed before this court and upon due consideration of the same, it appears to this court that while passing the impugned judgment, the first revisional court came to a

finding that the learned trial court while passing its judgment dated 29.04.2011 did not at all consider the evidence adduced by the prosecution witnesses both oral and documentary.

10. In considered view of this court, such finding of the first revisional court is not at all justified, in view of the fact that in page nos. 3 and 4 of the judgment dated 29.04.2011, learned trial court made his best possible endeavour to appreciate the evidence of the four prosecution witnesses and in doing so, he finds some material anomalies and contradictions with regard to the time and place of occurrence and the said trial court also noticed material omission in the evidence of PW 1. This court considers that sitting in a court of revisional jurisdiction, the 1st revisional court ought not have appreciated the evidence as recorded by the learned trial court like an appeal unless it is found that such appreciation of evidence is of such a nature which either shocks the conscience of the court or there occurred violation of the fundamental principle of law in course of the assessment of the evidence of the prosecution witnesses.

11. In view of the discussions made hereinabove, this court thus finds sufficient merit in the instant application and accordingly the instant revisional application is hereby allowed.

12. As a result the impugned judgment dated 31.3.2012 as passed by the learned Additional Sessions Judge, First Track, 5th court, Bichar

Bhavan, Kolkata in Criminal Revision no. 194 of 2011 is hereby set aside.

Consequently, the judgment dated 29.04.2011 as passed in GR case no. 896 of 1999 by the court of Metropolitan Magistrate, 6th Court, Calcutta is hereby affirmed.

13. The department is directed to forward the copies of this judgment both to the trial court and to the first revisional court forthwith. Lower court record, if received in the meantime, be returned to the learned trial court.

14. Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Partha Sarathi Sen, J.)