

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

C.R.R. 2193 of 2015

Sk. Belal and Others

Versus

The State of West Bengal

For the State : Ms. Anasuya Sinha, Adv.

Heard on : 13.02.2024

Judgment on : 18.03.2024

Ajay Kumar Gupta, J:

1. This Criminal Revisional application has been filed by nineteen accused persons/petitioners challenging the order No. 54 dated 26th June, 2015 passed by the learned Additional Sessions Judge, 3rd Court, Tamruk, Purba Medinipur in connection with ST 3(4)12 [State Vs. Sk. Belal and 22 others] under Sections

147/148/149/326/307/34 of the Indian Penal Code, thereby the learned Court below rejected the prayer of the accused persons for adjournment on the date of delivery of judgment and issued warrant of arrest against accused persons, namely, 1) Sk. Belal, 2) Sk. Jalal, 3) Sk. Rabiul, 4) Sk. Ajimuddin, 5) Sk. Mostafa, 6) Sk. Saibul, 7) Sk. Khalek, 8) Nur Hossain Sha, 9) Sk. Jiyad, 10) Sk. Rakhal, 11) Based Sha, 12) Sk. Mahiruddin, 13) Sk. Saidul, 14) Sk. Selim, 15) Malek Kha, 16) Sk. Tofiyar, 17) Sk. Mujid, 18) Sk. Azad, 19) Sk. Ali Akbar, 20) Sk. Intaj, 21) Sk. Rahim, 22) Sk. Sattar and 23) Sk. Nurshed.

2. The brief facts of the case are as under:

2a. One Farid Mullick lodged a complaint before the Nandigram Police Station on 23rd February, 1992 at 12.15 hours to the effect that he and another person, namely, Abdul Jiad were the Mutawallis of Dhanyakhola Borkhan Saheb Pir Wakf Estate. On 23rd February, 1992 at around 8.30 AM, the accused persons along with others started catching fishes in the pond and when the complainant and others resisted, the accused persons started beating them with Lathis, Ballams and other weapons resulting grievously hurt to them and also broke the tiles of the houses by throwing bricks. Majed Mullick's house was also burnt. The accused persons also threatened

with dire consequences. On such complaint, a case was registered as Nandigram Police Station Case No. 20 of 1992 dated 23rd February, 1992 under Sections 147/148/149/427/325/447/307/34 of IPC against the accused persons. Subsequently, some of the accused persons surrendered and got bail.

2b. The investigation has been finally ended by filing charge sheet. The said Nandigram P.S. Case No. 20 of 1992 was subsequently committed to Sessions Judge for trial. The case was transferred to the court of learned Additional Sessions Judge, 3rd Court, Tamluk, Purba Medinipur for its trial and same was re-numbered as ST 3(4)12 [State Versus Sk. Belal and 22 others] under Sections 147/148/149/326/307/34 of the IPC.

2c. The trial was commenced and prosecution witnesses were fully examined. The learned Additional Sessions Judge concluded the argument on 12th May, 2015. All accused persons were directed to be present on the next date for delivery of judgment on 26th June, 2015, the petitioners could not appear before the Learned Court as they were otherwise pre-occupied in their engagements and made an application for adjournment before the Ld. Court praying for fixing of another date. The learned Court, instead of granting a date, rejected the prayer for adjournment and issued warrant of arrest against the

accused persons by naming them. However, out of the 23 accused persons against whom warrant was issued, four accused persons already died. Strangely enough, the warrants of arrest have been issued in the names of the dead persons also and the Officer in Charge of Nandigram Police Station has been directed to execute the warrants positively by 4th July, 2015 and the next date fixed for execution of the warrants of arrest on 4th July, 2015.

2d. It is the contention of the petitioners that warrants of arrest issued by the learned Judge on 26th June, 2015 and the non-pronouncement of judgment are completely illegal in view of the fact that proviso to Section 353(6) clearly indicates that when there are more than one accused persons and one or more of them do not attend the court on the date on which the judgment is to be pronounced, the presiding officer may, in order to avoid undue delay in the disposal of the case, pronounce the judgment notwithstanding their absence. Such being the position of law, the learned Judge should not have withheld pronouncement of the judgment for extraneous reasons though fully knowing that the said case is 23 years old.

2e. Being aggrieved by and dissatisfied with order No. 54 dated 26th June, 2015 passed by the learned Additional Sessions Judge, 3rd

Court, Tamluk, Purba Medinipur in connection with case No. ST 3(4)12 [State Vs. Sk. Belal and 22 others], petitioners prefer the instant revisional application. Under the above facts and circumstances, petitioners have filed this case and same has come up before this Bench for disposal.

3. In spite of giving several opportunities, nobody appears on behalf of the petitioners on call. Even on earlier occasions, no one represented the petitioner. No accommodation was sought.

SUBMISSION ON BEHALF OF THE STATE:

4. Learned counsel appearing on behalf of the State submitted that out of those 19 accused persons, 18 persons were subsequently surrendered and their cases have been decided in finality. They have been sentenced to fine of Rs. 3,000/- each in default to suffer simple imprisonment for 3 months for the offences punishable under Sections 324/149 of the Indian Penal Code vide judgment dated 29.01.2018. All of them have deposited the fine amount vide PCR No. 16/22 to 16/38 dated 07.02.2018 in pursuant to the said judgment. Accordingly, their case became infructuous.

5. It is further submitted that out of those 19 accused persons one Sk. Belal died and his death certificate was also produced before

the learned Court below and his death was recorded and case was dropped. Whereas the accused persons Sk. Mujid and Sk. Nurshed are not reflected in the said order of the judgment and their warrants of arrest were issued vide order dated 26.06.2015 are still exist and the impugned order under challenge is rightly passed by the learned Court below. Accordingly, that order cannot be interfered with. Accordingly, their case may be dismissed.

DISCUSSION, ANALYSIS AND CONCLUSIONS BY THIS COURT:

6. Heard the submission of the learned counsel appearing on behalf of the State and on perusal of the entire case diary and report, it appears the learned Court below has decided the case finality against 16 accused persons, namely, 1) Sk. Rabiul, 2) Sk. Ajimuddin, 3) Sk. Mostafa, 4) Sk. Saibul, 5) Nur Hossain Sha, 6) Sk. Rakhal, 7) Sk. Mahiruddin, 8) Sk. Rahim, 9) Sk. Sattar, 10) Sk. Saidul, 11) Sk. Selim, 12) Sk. Tofiyar, 13) Malek Kha, 14) Sk. Azad, 15) Sk. Ali Akbar and 16) Sk. Intaj. They have been convicted and sentenced to fine of Rs. 3,000/- each in default to suffer simple imprisonment for 3 months for the offences punishable under Sections 324/149 of the Indian Penal Code vide judgment dated 29.01.2018. All of them have deposited the fine amount vide PCR Nos. 16/22 to 16/38 dated 07.02.2018 in pursuant to the said judgment. However, one of the

present petitioners, namely, Sk. Belal died, his case has been dropped.

7. Under such circumstances, case of the 16 petitioners became infructuous as conviction order already passed by the learned Court below. Accordingly, their cases are required to be dismissed being infructuous. Warrants of arrest against two accused persons, namely, Sk. Mujid and Sk. Nurshed were issued vide order dated 26.06.2015 is found correct and legal, when they did not appear on the date of delivery of judgment. Accordingly, their cases for issuing warrants of arrest are correct and legal and there is no any error in jurisdiction or law. Therefore, their case has lack of merits.

8. Consequently, **C.R.R. 2193 of 2015** is, thus, partly dismissed against two accused persons, namely, Sk. Mujid and Sk. Nurshed without order as to costs. At the same time, case of other 16 petitioners, namely, 1) Sk. Rabiul, 2) Sk. Ajimuddin, 3) Sk. Mostafa, 4) Sk. Saibul, 5) Nur Hossain Sha, 6) Sk. Rakhal, 7) Sk. Mahiruddin, 8) Sk. Rahim, 9) Sk. Sattar, 10) Sk. Saidul, 11) Sk. Selim, 12) Sk. Tofiyar, 13) Malek Kha, 14) Sk. Azad, 15) Sk. Ali Akbar and 16) Sk. Intaj became infructuous. Hence, their case is dismissed being

infructuous. Connected applications, if any, are also thus, disposed of.

9. Case Diary is to be returned to the learned counsel of the State.

10. Interim order, if any, stands vacated.

11. Let a copy of this judgment and order be sent to the learned Court below for information.

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

13. 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.)