

23.12.2024
rc/ct.no.02
Item No.19

**IN THE HIGH COURT AT CALCUTTA
Circuit Bench at Jalpaiguri
Criminal Revisional Jurisdiction**

CRR No. 497 of 2024

In the matter of : Sri Upen Roy

.....Petitioner

Mr. Subham Ghosh
Mr. Mayank Roy

... for the Petitioner

Mr. Aditi Sankar Chakraborty
Mr. Kallol Acharjee

...for the State

Affidavit of service filed by the petitioner is taken on record.

The petitioner who has been convicted for offence punishable under Section 323 of the Indian Penal Code and sentenced to suffer imprisonment for three months and pay fine of Rs.1000/- has assailed the judgment delivered by the learned Additional Sessions Judge, Fast Track Court, Siliguri in Criminal Appeal No. 18(5) of 2016 on November 13, 2024 affirming the judgment of conviction dated March 19, 2016 delivered by the learned Judicial Magistrate, First Court, Siliguri in G.R.Case No. 2651 of 2011.

Learned counsel for the petitioner submits that the petitioner and the defacto complainant are relatives and the alleged incident is a result of scuffle between them on the issue of cultivating a land of which both the parties claim to be owners. The incident occurred on November 30, 2011 and the petitioner suffered the ordeal of criminal trial for about 13 years. The

petitioner prays for his release on probation under The Probation of Offenders Act, 1958.

Learned counsel for the petitioner further submits that the petitioner is ready and willing to pay enhanced fine and be released on probation in view of the trivial nature of the offence and the period of sufferance of the petitioner. Learned counsel for the petitioner has placed reliance on the authority in **State of Maharashtra Vs. Jagmohan Singh Kuldip Singh Anand** reported in **(2004) 7 SCC 659** in support of his contention.

Learned counsel for the State opposes the prayer.

It appears that the alleged incident occurred on November 30, 2011 and the case was registered on December 01, 2011 under Sections 447/341/325/24 of the Indian Penal Code. Charges were framed under Sections 447/341/324/34 of the Code and upon recording evidence of witnesses the learned Trial Court convicted the petitioner for offence punishable under Section 323 of the Indian Penal Code and sentenced him to suffer imprisonment for three months and pay fine of Rs.1000/-, in default to suffer simple imprisonment for another 15 days. The other accused were found not guilty and acquitted. The petitioner carried the judgment in appeal and by a judgment delivered on November 13, 2024 in Criminal Appeal No. 18(05) of 2016, the learned Appellate court affirmed the judgment of the learned Trial Court.

Record reveals that the alleged incident was a result of a dispute between the parties with regard to the cultivation of a

land of which both the parties claim to be owners. The petitioner has suffered the ordeal of the criminal proceedings for about 13 years. The parties are related to each other.

In view of the facts and circumstances of the case as recorded by the learned Trial Court and the learned Appellate court as well as the nature of offence, this Court is inclined to hold that the petitioner may be released on probation by directing him to execute a personal bond of one year for good behaviour subject to the satisfaction of the learned Trial Court.

In view of the above, the revisional application being CRR No. 497 of 2024 is allowed.

The judgment delivered by the learned Trial Court on March 19, 2016 in G.R.Case No. 2651 of 2011 in so far as the imposition of sentence upon the petitioner is concerned and the portion of the judgment of the learned Appeal Court in Criminal Appeal No. 18(5) of 2016 delivered on November 13, 2024 affirming the said sentence be set aside.

The petitioner be released on probation upon execution of personal bond of one year for good behaviour subject to the satisfaction of the learned Trial Court. The petitioner shall also pay fine of Rs.5000/- within a week from date failing which the sentence imposed by the learned Trial Court shall revive.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

Urgent certified website copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Suvra Ghosh,J)