

In The High Court at Calcutta
Criminal Appellate Jurisdiction

Appellate Side

Present:

The Hon'ble Justice Debangsu Basak

and

The Hon'ble Justice Md. Shabbar Rashidi

GA No. 1 of 2025

**The State of West Bengal, through the Learned Public
Prosecutor, High Court, Calcutta**

Vs.

Central Bureau of Investigation & Anr.

With

GA No. 2 of 2025

**Central Bureau of Investigation, represented by Superintendent
of Police, CBI, Special Crime Branch-I**

Vs.

Sanjay Roy

For the Appellant/

State in GA/1/2025

: Mr. Kishore Datta, Ld. A.G.

Mr. Debasish Roy, Ld. P.P.

Mr. Rudradipta Nandi, Ld. A.P.P.

Mr. Saryati Datta, Adv.

For the C.B.I. and

Appellant in GA/2/2025 : Mr. S.V. Raju, Ld. A.S.G, Sr. Adv.

(In virtual platform)

Mr. Rajdeep Majumder, D.S.G.I.,

Sr. Adv.

Mr. Amajit De, Adv.

Mr. Moyukh Mukherjee, Adv.

Mr. Samrat Goswami, Adv.

For the Respondent No. 2/

Convict GA/1/2025

and Respondent/

Convict in GA/2/2025 : Mr. Kaushik Gupta, Sr. Adv.

Ms. Senjuti Chakrabarty, Adv.

For the Victim

: Mr. Sudipta Maitra, Sr. Adv.

Mr. Samim Ahmed, Adv.

Ms. Gargi Goswami, Adv.

Mr. Aniruddha Singh, Adv.

Mr. Amartya De, Adv.

Mr. Rajdip Halder, Adv.

Heard on : January 27, 2025

Judgment on : February 7, 2025

Md. Shabbar Rashidi, J.

1. Two Criminal Appeals have been filed against the Judgment and Order of conviction dated January 18, 2025 passed by learned 1st Additional Sessions Judge, Sealdeh, South 24 Parganas, in Sessions Trial Case No. 1 (11) of 2024 corresponding to Sessions Case No. 177 of 2024 under Section 64/66/103(1) of Bhartiya Nyay Sanhita (BNS), 2023 as well as the corresponding order of Sentence dated January 20, 2025.
2. One of the appeals being GA No. 1 of 2025 has been filed at the behest of Government of West Bengal under Section 418 (1) of Bhartiya Nagrik Suraksha Sanhita (BNSS) challenging the adequacy of the sentence passed against the convict seeking enhancement of punishment awarded to the convict.
3. Another appeal being GA 2 of 2025 has been filed at the behest of Central Bureau of Investigation (CBI) under Section 418 (2) of Bhartiya Nagrik Suraksha Sanhita, also seeking an order for enhancement of the punishment imposed upon the convict.
4. The incident took place on August 9, 2024. The victim was raped and murdered. On the basis of a complaint lodged by

the father of the victim, Tala Police Station Case No. 52 dated August 9, 2024 under Sections 64/66/103 (1) of Bhartiya Nyay Sanhita was started following an Unnatural Death Case No. 861 dated August 9, 2024.

5. Tala Police Station took up investigation of the Case and later a Special Investigation Team was also formulated for such investigation. However, in pursuance of an order passed by this Court, on August 13, 2024, in connection with several Public Interest Litigation Writ Petitions being WPA (P) 335-339 of 2024, the investigation of the case was handed over to the Central Bureau of Investigation (CBI). Subsequently, the CBI registered a fresh case being RC0482024S0010 dated August 13, 2024 and continued with the investigation.
6. On completion of investigation, CBI submitted charge sheet in the case. Accordingly, in consideration of evidence collected during such investigation, charges under Sections 64/66/103(1) of Bhartiya Nyay Sanhita were framed against the accused which were denied by him. The accused claimed to be tried for the aforesaid offences.

7. The accused stood trial and upon conclusion of such trial, was found guilty of the offences under Sections 64/66/103(1) of Bhartiya Nyay Sanhita. He was sentenced to undergo Rigorous Imprisonment for life with fine of ₹. 50,000/- and in default of payment of fine to undergo simple imprisonment for a further period of 5 months for the offence punishable under Section 64 of Bhartiya Nyay Sanhita. He was further sentenced to Rigorous Imprisonment for life with fine of ₹. 50,000/- and in default of payment of fine to undergo simple imprisonment for a further period of 5 months for the offence punishable under Section 103 (1) of Bhartiya Nyay Sanhita. The convict was also convicted for Rigorous Imprisonment for remainder of natural life for the offence punishable under Section 66 of Bhartiya Nyay Sanhita.
8. Being dissatisfied with the quantum of punishment imposed upon the convict, the CBI which conducted the trial as prosecution as well as the State, both, have approached this Court seeking enhancement of the punishment so awarded to the convict at the trial. It was submitted on behalf of Central Bureau of Investigation that at the time of hearing on the point

of sentence, it had requested the learned trial Court to award maximum punishment i.e. punishment of death to the convict.

9. The Central Bureau of Investigation, raised objection to the appeal filed on behalf of the State of West Bengal being G.A.1 of 2025. It was submitted that since the investigation of the case was conducted by CBI and it conducted the trial as a prosecution agency, State of West Bengal is not authorized to present an appeal, specially, for enhancement of the punishment imposed, in accordance with the provisions of Section 418 (2) of Bhartiya Nagrik Suraksha Sanhita, 2023. It was also submitted that although, in terms of the provisions of Section 418 (1) of BNSS, State Government is the designated authority to direct presentation of an appeal against the sentence on the ground of its inadequacy but, such powers are circumscribed by Section 418 (2) thereof. According to learned senior advocate for CBI, cases where investigation of the case was conducted by an agency empowered to make investigation into an offence under any Central Act other than the BNSS, the Central Government alone is authorized presentation of such appeal. In support of his contention, learned senior

advocate for CBI relied upon **(2010) 5 Supreme Court Cases 1 (Lalu Prasad Yadav and Another v State of Bihar and Another)**.

10. It was also contended on behalf of CBI that the word 'also' was inserted in the provisions of Section 377 (2) of the Code of Criminal Procedure by Act 45 of 1978 i.e. the Code of Criminal Procedure (Amendment), Act 1978. However, such amendment was repealed subsequently, by Act 19 of 1988 i.e. The Repealing and Amending Act, 1988.
11. On the other hand, learned Advocate General submitted that Section 418 of Bhartiya Nagrik Suraksha Sanhita, 2023 empowers the State Government to direct presentation of an appeal against sentence on the ground of its inadequacy. He further submitted that the aforesaid provisions are *pari materia* to Section 377 of the erstwhile Code of Criminal Procedure, 1973. Learned Advocate General pointed out that Section 377 (2) of the Code of Criminal Procedure, originally, empowered the Central Government alone to direct presentation of such appeal. However, following observations made in **(1977) 3 Supreme Court Cases 25 (Eknath**

Shankarrao Mukkavar v State of Maharashtra), Section 377 of the Code of 1973 was amended to insert the words, 'also' in sub-section (2) thereof.

12. Learned Advocate General submitted that by the insertion of the word 'also' in Section 377 of the Code of Criminal Procedure is indicative of legislative intent of such insertion. He submits that such insertion is in the form of an addition and not a substitution. According to learned Advocate General, such insertion of the word 'also' empowers the Central Government to direct presentation of an appeal where investigation of the case has been carried out by any agency empowered to investigate an offence under any Central Act, in addition to the State Government as envisaged in sub-section (1) of Section 377. In order to decipher the legislative intent for amendment carried out in Section of 377 of the Code of Criminal Procedure, 1973, learned Advocate General also relied on Clause 30 of the Forty-First Report of the Law Commission of India dated May 12, 1978. It was also submitted that Section 418 (2) of BNSS contains the word 'also' from the very inception, therefore, the legislative

intention to incorporate the word 'also' should be read in the BNSS as well, as indicated in the Law Commission Report.

13. Learned Advocate General further submitted that Section 418 (1) of the BNSS empowers the State Government to direct presentation of an appeal for inadequacy of sentence. Section 418 (2) is in addition to such powers of the State Government and empowers the Central Government in this regard under certain circumstances. Such powers under Section 418 (2) do not fetter the powers of the State Government in any manner whatsoever. To such proposition, learned Advocate General relied upon **(1976) 1 Supreme Court Cases 385 (Khemraj v State of Madhya Pradesh)**.

14. Learned Advocate General also submitted that the language used in Section 418 (2) are quite explicit of the competence of State Government to present an appeal. The statement of Objects and Reasons of a statute cannot be utilized for the purpose of restricting and controlling the plain meaning of the language employed by the legislature. Where the words of a statute are plain and unambiguous, effect must be given to them. On such proposition, learned Advocate

General relied upon **(2003) 1 Supreme Court Cases 692 (Bhaiji v Sub-Divisional Officer, Thandla and Others)**.

15. As regards the appeal presented on behalf of the CBI being GA 2 of 2025, it has been submitted by the learned Advocate General that in terms of the provisions contained in Section 418 (2) of BNSS, the Central Government could have directed the public prosecutor to present the appeal. The appeal has been presented on behalf of the CBI by a person who is not authorized to present the appeal. GA 2 of 2025 has been presented by a person who has not been appointed as a Public Prosecutor. In support of such contention, learned Advocate General relied upon **(1984) 2 SCC 500 (A.R. Antulay Vs. Ramdas Srinivas Nayak & Anr.)** and **(1981) 2 SCC 525 (State of Rajasthan Vs. Manbhar)**.

16. Per contra, learned senior advocate appearing for CBI submitted that the appeal of CBI has been filed by the special public prosecutor appointed by the Central Government in terms of the provisions of the Code of Criminal Procedure, 1973 for the purpose of conducting the present appeal. He

referred to Section 2 (4), and Section 24 of the Code of Criminal Procedure.

17. Two issues have fallen for our consideration. One is whether the State Government is competent to direct presentation of an appeal against inadequacy of sentence where the investigation of the case has been conducted by a central agency like Central Bureau of Investigation or it is the Central Government alone which is authorized to issue such directions in the given circumstances. The other is whether the appeal filed by the CBI through the Special Public Prosecutor is valid or not.

18. Section 418 of BNSS, 2023, which is identical to Section 377 of the Code of Criminal Procedure, 1973 reads as follows:

418. (1) Save as otherwise provided in sub-section (2), the State Government may, in any case of conviction on a trial held by any Court other than a High Court, direct the Public Prosecutor to present an appeal against the sentence on the ground of its inadequacy—

(a) to the Court of Session, if the sentence is passed by the Magistrate; and

(b) to the High Court, if the sentence is passed by any other Court.

(2) If such conviction is in a case in which the offence has been investigated by any agency empowered to make investigation into an offence under any Central Act other than this Sanhita, the Central Government may also direct the Public Prosecutor to present an appeal against the sentence on the ground of its inadequacy—

(a) to the Court of Session, if the sentence is passed by the Magistrate; and

(b) to the High Court, if the sentence is passed by any other Court.

(3)

(4)

19. According to learned Advocate General, besides the State Government empowered under Section 418 (1) of BNSS, Central Government is also empowered under Section 418 (2) to present the appeal. Such power under Section 418 (2), does not restrict the power of State Government to present an appeal which is a general provision. **Khemraj (Supra)** was rendered in the context of an appeal against acquittal and that too, in a situation where provision for direction of presentation

of appeal by the Central Government was incorporated by an amendment which was not available earlier. In such case, the Hon'ble Supreme Court examined the introduction of sub-section (2) to Section 417 the Code of Criminal Procedure, 1898 and laid down that,

“12. Investigation under the Delhi Act is, therefore, a central investigation and the officers concerned are under the superintendence of the officer appointed by the Central Government. The superintendence of the Establishment is also under the Central Government. The Central Government, therefore, is concerned with the investigation of the cases by the Establishment and its ultimate result. It is in that background that in 1955, Section 417 was amended by adding sub-section (2) to the section to provide for appeal against acquittal in cases investigated by the Establishment also on the direction of the Central Government. In view of the provisions of the Delhi Act it was necessary to introduce sub-section (2) in Section 417 so that this Central agency which is solely and intimately connected with the investigation of the specified offences may also approach the Central Government for direction to appeal in appropriate cases.

13. This, however, does not bar the jurisdiction of the State Government also to direct presentation of appeals when it is moved by the Establishment. The Establishment can move either the Central Government or the State Government. It will be purely a matter of procedure whether it moves the State Government directly or through the Central Government or in a given case moves the Central Government alone. It will again be a matter of procedure when the Central Government decides to appeal it requests the State Government to do the needful through the Public Prosecutor appointed under the Code.”

20. Decision in **Eknath Shankarrao Mukkawar (Supra)** was delivered when the word ‘also’ was not introduced in subsection 2 of Section 377 of the Code of Criminal Procedure. In such context of the matter, the Hon’ble Supreme Court held that,

“10. It is true that Section 378(2) follows the pattern of Section 417(2) of the old Code and the right to appeal is conferred upon both the State Government and the Central Government in express terms in Section 378(2). It is clear that the legislature has maintained a watertight dichotomy while dealing with the matter of appeal against inadequacy of

sentence. We agree that in the absence of a similar word “also” in Section 377(2) it is not possible for the court to supply a casus omissus. The two sections, Section 377 and Section 378 CrPC being situated in such close proximity, it is not possible to hold that omission of the word “also” in Section 377(2) is due to oversight or per incuriam.”

21. It is in this context, it was the contention of learned Advocate General that powers of Central Government and the State Government were clearly defined and demarcated prior to amendment where there was no scope to tread on to the powers of one another. The introduction of the word ‘also’ in sub-section (2) of Section 377 of the Code of Criminal Procedure was consciously made to make the powers complimentary and not substitutive. Therefore, such amendment empowers, both the State Government and the Central Government to present an appeal against inadequacy of sentence irrespective of which agency has conducted the investigation.

22. With respect, in the decision in **Eknath Shankarrao Mukkawar (Supra)** the matter was dealt with by the Supreme Court in a different perspective altogether. Such decision dealt

with a case where the statute does contain an express provision empowering specialized agency to conduct investigation. In the said case, the Hon'ble Supreme Court observed that,

“11. Section 377 CrPC introduces a new right of appeal which was not earlier available under the old Code. Under sub-section (1) of Section 377 CrPC the State Government has a right to appeal against inadequacy of sentence in all cases other than those referred to in sub-section (2) of that section. This is made clear under Section 377(1) by its opening clause “save as otherwise provided in sub-section (2)”. Sub-section (2) of Section 377, on the other hand, confers a right of appeal on the Central Government against a sentence on the ground of its inadequacy in two types of cases:

(1) Those cases where investigation is conducted by the Delhi Special Police Establishment constituted under the Delhi Special Police Establishment Act, 1946.

(2) Those other cases which are investigated by any other agency empowered to make investigation under any Central Act not being the Code of Criminal Procedure.”

23. In such perspective, the Hon'ble Supreme Court also noted in the said decision that,

15. By Section 3 of the Delhi Special Police Establishment Act, the Central Government may by notification in the Official Gazette specify the offences or class of offences which are to be investigated by the Delhi Special Police Establishment. It is only when such a notification is made by the Central Government that the Delhi Special Police Establishment is empowered to investigate the specified offences. Similarly if in any other Central Act, not being the Code of Criminal Procedure, a provision is made for empowering a particular agency to make investigation of offences under that Act, then also the Central Government alone will be the competent authority to prefer appeal under Section 377(2) CrPC. The true test, therefore, under Section 377(2) CrPC is whether the offence is investigated by the Delhi Special Police Establishment or is investigated by any other agency empowered to make investigation under any Central Act other than the Code of Criminal Procedure. In other words, just like Section 3 of the Delhi Special Police Establishment Act, there should be an express provision in the Prevention of Food Adulteration Act empowering the making of investigation under the

Act. But no such express provision is found in the Prevention of Food Adulteration Act.

24. In the wisdom of Hon'ble Supreme Court, such view was laid down in **Eknath Shankarrao Mukkawar (Supra)** in consideration of the opening clause "save as otherwise provided in Sub-section (2)". Otherwise, State Government was the competent authority to present the appeal for inadequacy of sentence. In the present case, the investigation was conducted by Central Bureau of Investigation following an order passed in several Public Interest Writ Petitions. No matter the investigation was conducted in accordance with the provisions of Code of Criminal Procedure or the BNSS, as the case may be.
25. Similar principles were laid down by the Hon'ble Supreme Court in the case of **Lalu Prasad Yadav (Supra)**. It was that the words "save as otherwise provided in sub-section (2)", appearing in the opening paragraph of sub-section (1) of Section 378 of the Code of Criminal Procedure could not be accorded a meaning that would result in wiping out the effect of controlling words in sub-section (1) "save as otherwise

provided in sub-section (2)”, which was indicative of legislative intent to exclude two types of cases mentioned in sub-section (2) out of operation of the body of sub-section (1). The Hon’ble Supreme Court in the said case observed that,

53. We are not persuaded by the submission of Mr L. Nageswara Rao for more than one reason. In the first place, the observations in Eknath Shankarrao Mukkawar [(1977) 3 SCC 25 : 1977 SCC (Cri) 410] , in relation to Section 378 do not operate as a binding precedent as construction of Section 378 was neither under consideration nor in issue in that case. Secondly, and more importantly, although sub-section (2) of Section 377 came to be amended by Act 45 of 1978 to include the word “also” therein, but the Statement of Objects and Reasons relating to that amendment is of no relevance insofar as construction of Sections 378(1) and (2) is concerned. Insofar as Section 378 is concerned, the word “also” occurring in sub-section (2) cannot be accorded a meaning that would result in wiping out the effect of controlling words in sub-section (1)—“save as otherwise provided in sub-section (2)” —which are indicative of legislative intent to exclude two types of cases

mentioned in sub-section (2) out of operation of the body of sub-section (1).

54. In our opinion, the legislature has maintained a mutually exclusive division in the matter of appeal from an order of acquittal inasmuch as the competent authority to appeal from an order of acquittal in two types of cases referred to in sub-section (2) is the Central Government and the authority of the State Government in relation to such cases has been excluded. As a necessary corollary, it has to be held, and we hold, that the State Government (of Bihar) is not competent to direct its Public Prosecutor to present appeal from the judgment dated 18-12-2006 passed by the Special Judge, CBI (AHD), Patna.

26. Although, **Lalu Prasad Yadav (Supra)** was rendered in the context of Section 378 of the Code of Criminal Procedure but the words and phrases used in such Section is akin to that used in Section 377 of the Code of 1973. So also is the case in Section 418 of BNSS, 2023. Therefore, the underlying principle of mutually exclusive division maintained by the legislature in case of Section 378 of the Code of Criminal Procedure may be read in Section 377 as well as in Section 418 of BNSS. In **Lalu Prasad Yadav (Supra)**, the Hon'ble

Supreme Court noted that by incorporation of the word ‘also’ in sub-section (2) of Section 377 of the Code of 1973 has brought the said provision in *pari materia* with the provisions of Section 378 (2).

27. Relying upon **Bhaiji (Supra)** Learned Advocate General has also submitted that plain and simple reading of sub-section (2) of Section 377 of the Code of 1973, with reference to amendment carried out to incorporate the word ‘also’ therein or of Section 418 (2) of BNSS unambiguously indicates that the legislature intended to empower both the State Government as well as Central Government to issue directions for presentation of an appeal against inadequate sentence.

28. Respectfully, we are unable persuade ourselves to subscribe to such view. If we construe the amended insertion to empower the State Government and Central Government, simultaneously, the use of the words, “Save as otherwise provided in sub-section (2)”, in the opening paragraph of Section 377 of the Code or 418 of BNSS loses its significance. As was held by the Hon’ble Supreme Court in the case of **Lalu Prasad Yadav (Supra)**.

29. Moreover, the aim and object for amendment of Section 377 as manifest from clause 30 of the Forty First Report of the Law Commission of India, has been said to clarify that the State Government, besides the Central Government can also direct the Public Prosecutor to present an appeal against inadequate sentence in cases in which the offence was investigated by the Delhi Special Police Establishment or any other agency empowered to investigate an offence under any other Central Act. Such Object and Reason merely empowers the two agencies to direct presentation of an appeal. It does not specify that both can issue such direction simultaneously. Lest, such Object and Reasons could have indicated as to the course taken if two simultaneous appeals are filed at the behest of the two authorities. There may be exigency where one agency fails and neglects to issue such directions.
30. As regards the competence of the learned advocate for CBI to present the appeal being G.A. 2 of 2025, Section 2 (v) of BNSS defines the Public Prosecutor as:

(v)"Public Prosecutor" means any person appointed under section 18, and includes any person acting under the directions of a Public Prosecutor.

31. A Public Prosecutor is appointed in terms of Section 18 of BNSS which is set out as under:

18. (1) For every High Court, the Central Government or the State Government shall, after consultation with the High Court, appoint a Public Prosecutor and may also appoint one or more Additional Public Prosecutors, for conducting in such Court, any prosecution, appeal or other proceeding on behalf of the Central Government or the State Government, as the case may be:

Provided that for National Capital Territory of Delhi, the Central Government shall, after consultation with the High Court of Delhi, appoint the Public Prosecutor or Additional Public Prosecutors for the purposes of this sub-section.

(2).....

(3).....

(8) The Central Government or the State Government may appoint, for the purposes of any case or class of cases, a person who has been in practice as an

advocate for not less than ten years as a Special Public Prosecutor:

Provided that the Court may permit the victim to engage an advocate of his choice to assist the prosecution under this sub-section.

(9).....

32. The learned Advocate who has presented the appeal claimed to have been duly appointed by the Central Government to act as a Special Public Prosecutor for the purpose of presenting and conducting the appeal preferred against judgment of conviction passed in Sessions Trial Case No. 1 (11) of 2024 arising out of RC0482024S0010 dated August 13, 2024. In support of such contention, a writing dated January 21, 2025 is placed on record. He has been Special Public Prosecutor (Retainer Counsel) for CBI at Calcutta High Court. There appears nothing to prevent the CBI from appointing Special Public Prosecutors in terms of Sub-section (8) of Section 18 of BNSS.
33. The ratio laid down in the case of **A. R. Antulay (Supra)** to the proposition that in every trial before a Court of Session,

the prosecution shall be conducted by a Public Prosecutor, has no manner of application in the facts and circumstances of the present case.

34. In **Manbhar (Supra)** it was held by the Hon'ble Supreme Court that,

3. It will be seen that under sub-section (1) of Section 378, only a Public Prosecutor can present an appeal to the High Court from an original or appellate order of acquittal passed by any court subordinate to the High Court, if so directed by the State Government. Again, for a person to be a Public Prosecutor, it is necessary that he is either appointed as such under Section 24 or acts under the directions of a Public Prosecutor so appointed.

35. In the case at hand, we have already noted that the learned Advocate who has presented the appeal on behalf of CBI was duly appointed to conduct the appeal on behalf of CBI as a Special Public Prosecutor in terms of sub-section (8) of Section 18 of BNSS which is akin to Section 24 of the Code of Criminal Procedure, 1973. Therefore, we find no infirmity in the appointment of the learned advocate, who has presented

the appeal being G.A. 2 of 2025 as Special Public Prosecutor by the Central Bureau of Investigation.

36. Thus, on the basis of aforementioned discussions, we are of the view that since the investigation of the case was conducted by the Central Bureau of Investigation, a Central agency, in pursuance of an order passed by this Court, Central Government is the appropriate authority to issue directions for presentation of an appeal against inadequate sentence. In view of the words “Save as otherwise provided in sub-section (2)”, in the opening paragraph of Section 418 of BNSS, the State Government cannot issue such directions so long as the Central Government or the CBI is willing to do so. For the aforesaid reasons, the appeal filed on behalf of the State of West Bengal, being G.A. 1 of 2025 cannot be admitted and entertained.

37. Consequently, the appeal filed on behalf of CBI, being G.A. 2 of 2025 is admitted.

38. Issue usual notices. Call for the Trial court records forthwith.

39. Realisation of fine, if any, shall remain stayed.

40. Since the appeal pertains to conviction under Sections 64 and 66 of the Bhartiya Nyay Sanhita, 2023, it is required to be disposed of within a period of six months from the date of filing of such appeal, Paper books be prepared within two weeks from the date of receipt of Trial Court Records.
41. List G.A. 2 of 2025 forthwith on completion of the Paper Book before the appropriate Bench.
42. Urgent photostat certified copy of this order, if applied for, be supplied to the parties on priority basis upon compliance of all formalities.

[MD. SHABBAR RASHIDI, J.]

43. I agree.

[DEBANGSU BASAK, J.]