

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION**

**Present:
The Hon'ble Justice Debangsu Basak**

**CRR 1498 of 2025
Nijam Ali Mondal
Vs.
The State of West Bengal & Anr.**

For the Petitioner : Mr. Dipanjan Chatterjee, Advocate
Mr. Kalyan Kumar Bhattacharjee, Advocate
Ms. Kakan Das, Advocate
Ms. Rimpa Adhikari, Advocate

For the Opposite Party No.2 : Mr. Dhananjay Banerjee, Advocate
Mr. Praloy Hazra, Advocate

Hearing & Judgment on : September 9, 2025

DEBANGSU BASAK, J.:-

1. Revisional application is directed against the judgment and order dated February 17, 2025 passed by the Court of the Additional Sessions Judge, Kalna in Criminal Appeal No.07 of 2022.
2. By the impugned judgment and order, the first appeal court affirmed the judgment and order under appeal. The first appeal court, however, noted that, the petitioner before us who was the appellant before the first appeal court was not represented.
3. Learned Advocate appearing for the petitioner submits that, the petitioner was not heard prior to the appeal being disposed of. He

submits that, the first appeal court did not make any endeavour to engage any Advocate for the appellant for the purpose of disposal of the appeal.

4. Learned Advocate appearing for the opposite party/de facto complainant relies upon *(2013) 3 Supreme Court Cases 721 (K.S. Panduranga vs. State of Karnataka)* and contends that, the appeal court can dispose of an appeal on merits in absence of the appellant.
5. In the facts and circumstances of the present case, the petitioner before us suffered a judgment of conviction and order of sentence dated September 29, 2022 passed by the Learned Judicial Magistrate (1st Court), Kalna, Purba Bardhaman in Cr. Case No.04 of 2016.
6. Petitioner as the appellant preferred an appeal against such judgment and order of conviction dated September 29, 2022 to the Court of the learned Additional Sessions Judge, Kalna which was registered as Criminal Appeal No.07 of 2022.
7. Appeal of the appellant was disposed of by the judgment and order dated February 17, 2025 by affirming the judgment and order of conviction and sentence dated September 29, 2022.
8. Learned first appeal court noted that, the appellant did not argue the appeal in court in spite of several opportunities being granted. It also noted that, the appellant did not bring any supportive documents to substantiate point no.5 of the memorandum of appeal.

9. **K.S. Panduranga** (supra) is of following view with regard to the disposal of an appeal by the appeal court:

“19. From the aforesaid decision in Bani Singh, the principles that can be culled out are:

19.1. That the High Court cannot dismiss an appeal for non-prosecution simpliciter without examining the merits;

19.2. That the Court is not bound to adjourn the matter if both the appellant or his counsel/lawyer are absent;

19.3. That the court may, as a matter of prudence or indulgence, adjourn the matter but it is not bound to do so;

19.4. That it can dispose of the appeal after perusing the record and judgment of the trial court;

19.5. That if the accused is in jail and cannot, on his own, come to court, it would be advisable to adjourn the case and fix another date to facilitate the appearance of the appellant-accused if his lawyer is not present, and if the lawyer is absent and the court deems it appropriate to appoint a lawyer at the State expense to assist it, nothing in law would preclude the court from doing so; and

19.6. That if the case is decided on merits in the absence of the appellant, the higher court can remedy the situation.”

10. In the facts and circumstances of the present case, the first appeal court proceeded to dispose of the appeal in absence of the appellant. First appeal court as it transpires from the impugned judgment and order did not discuss the evidence led at the trial. There is no material on record to suggest that the learned First Appeal Court applied its mind as to the issue whether the prosecution was able to establish the charges beyond reasonable doubt.

11. In the facts and circumstances of the present case, the judgment and order dated February 17, 2025 impugned in this revisional application cannot be said to be a disposal on merits of the appeal.
12. In such circumstances, the impugned judgment and order dated February 17, 2025 passed by the first appeal court is set aside.
13. Criminal Appeal No.07 of 2022 is remanded for fresh hearing and consideration on merits.
14. I clarify that I did not enter into the merits of the present case. All points raised by the parties are kept open to be decided in the appeal.
15. **CRR 1498 of 2025** is **disposed of** accordingly.

(Debangsu Basak, J.)

(AD)