

IN THE HIGH COURT AT CALCUTTA

Criminal Revisional Jurisdiction

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 4371 of 2022

SMT. INDRANI CHATTERJEE

VS.

SMT. RUPA KARPAS & ORS.

For the Petitioner : Mr. Pinaki Ranjan Mitra.

For the Opposite Party Nos.1 & 2 : Mr. Bivash Banerjee,
Mr. Rohit Prasad.

Hearing concluded on : 11.12.2024

Judgment on : 06.01.2025

SHAMPA DUTT (PAUL), J. :

1. The present revisional application has been preferred against the judgment and order dated 11th November, 2022 passed in Criminal Appeal No.99 of 2017 by the learned Additional Sessions Judge, 4th Court, Howrah.
2. By the said judgment and order under revision the learned Additional Sessions Judge, 4th Court, Howrah has dismissed the appeal as being not maintainable on the following findings:-

“.....15. It is to be pointed out that chapter XXIX of the CrPC deals with appeals. In the said chapter under section-372 it has been specifically mentioned that

No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code or by any other law for the time being in force:

The following are the judgment or order against which appeal can be preferred as per the provisions of CrPC

Section 373 – Appeal from orders requiring security or refusal to accept or rejecting surety for keeping peace or good behaviour

Section 374 – Appeals from convictions

Section 375 – No appeal in certain cases when accused pleads guilty

Section 376 – No appeal in petty cases

Section 377 – Appeal by the State Government against sentence

Section 378 – Appeal in case of acquittal

Section 379 – Appeal against conviction by High Court in certain cases

Section 380 – Special right of appeal in certain cases

16. Section 372 of the CrPC clearly states that no appeal lies except against the judgment or order as mentioned in section 373 to 380 of the CrPC.

17. The assailed judgment & order does not come under any of the judgment or order as mentioned under section 373 to 380 of the CrPC. The memorandum of appeal also does not state under which provisions of CrPC this appeal has been preferred. No cogent reasons are advanced by the complainant as to how he was prevented from mentioning the provisions of law which have been invoked by the complainant to file the appeal.

18. As the assailed judgment & order does not come under the purview of S-373 to 380 of the CrPC it is difficult to conclude that an appeal lies against the assailed judgment & order under the provisions of CrPC. As no appeal lies against the said assailed judgment & order this appeal is liable to be dismissed as not maintainable on account of the aforementioned reasons under facts and circumstances of the case to meet the best interest of justice.

Hence,

Ordered,

the appeal is dismissed on merit as not maintainable. Let a copy of the judgment be sent to Ld. Judicial Magistrate, Third Court at Howrah, District: Howrah, for information and necessary action.

**Sd/-
Additional Sessions Judge
4th Court, Howrah..... ”**

3. **It appears from the materials on record** that initially the said case before the learned Sessions Judge was registered as a revisional application but considering the fact that it was against an order of conviction, on the prayer of the appellant, the learned Sessions Judge, Howrah by virtue of Section 374 of the Cr.P.C. converted the same into an appeal.
4. It appears from the judgment and order under revision that the learned Additional Sessions Judge, 4th Court, Howrah came to the erroneous finding that no appeal lies from a judgment and order as mentioned in Section 373 to 380 of Cr.P.C. **The learned Judge overlooked the provision of Section 374 of Cr.P.C.**
5. The proceedings before the learned Sessions Judge arose out of a proceeding under Section 138 of the Negotiable Instruments Act, 1881.

6. **Section 148 of the N.I. Act** lays down the power of the **Appellate Court** to order payment **pending appeal against conviction**. As such, the appeal before the learned Additional Sessions Judge was maintainable in its form and prayer.
7. In view of the discussions made above, it appears that the said order suffers from inherent defects and is thus required to be set aside in the interest of justice or the same shall be an abuse of the process of law.
8. **CRR 4371 of 2022 is allowed.**
9. Judgment and order dated 11th November, 2022 passed in Criminal Appeal No.99 of 2017 by the learned Additional Sessions Judge; 4th Court, Howrah under revision is **hereby set aside**.
10. **Criminal Appeal No.99 of 2017 is restored to its own file and number** in the Court of the learned Additional Sessions Judge, 4th Court, Howrah for hearing the appeal afresh, in accordance with law.
11. As the present case is an old matter, the learned Judge is to make all endeavour to dispose of the appeal on hearing all the parties and shall pass a judgment in accordance with law within a period of **three months** from the date of this judgment and order.

- 12.** Applications, if any, connected thereto stand disposed of consequently.
- 13.** Interim order, if any, stands vacated.
- 14.** Copy of this judgment be sent to the Trial Court and the Appellate Court (ADJ, 4th Court, Howrah) for necessary compliance.
- 15.** Urgent Photostat certified copy of this judgment and order, if applied for, be supplied to the parties expeditiously after complying with all requisite formalities.

[Shampa Dutt (Paul), J.]