

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

29.06.2026
Item No. 46
Ct. No. 5
AN, Sayan

C.R.A. (SB) 13 of 2026

In Re:- An application for admission of appeal under Section 374(2) of the Code of Criminal Procedure, 1973, corresponding to Section 415 of the Bharatiya Nyaya Sanhita, 2023.

In the matter of : **Citta Das @ Chitta Ranjan Das**
... Petitioner.

Mr. Sayan De
Mr. Kaustav Shome
Mr. Sampad Das
Mr. Rimik Chakraborty
Ms. Bidotma Tirkey

...for the Petitioner.

Mr. Avrojoyti Das, Id. APP
Ms. Panchali Deb Sikder (Nag)

...for the State.

- 1.** This is an appeal filed against the judgment dated 19th May, 2026 passed by the learned Sessions Judge, Alipurduar in Sessions trial no. 28/2019.
- 2.** The issue which crops up is whether this appeal would be maintainable or not before this Court.
- 3.** Mr. Sayan De, learned counsel for the petitioner has submitted that the provisions under the B.N.S.S., 2023 does not make any scope for an appeal to be preferred before the learned Sessions Judge, against a judgment of the “Assistant Sessions Judge”. He has submitted that the post “Assistant Sessions Judge” has not been mentioned in the statute itself. According to him, since the trial Court was entrusted with the sessions power, a judgment thereof, if to be challenged, would not be before another Court with sessions power. But the forum

should be the High Court and not any other Court of Sessions of the same sessions division.

4. The Court looks into the provisions under Section 415(2) of the BNSS, 2023 which speaks as follows:

“415(2). Any person convicted on a trial held by a Sessions Judge or an Additional Sessions Judge or on a trial held by any other Court in which a sentence of imprisonment for more than seven years has been passed against him or against any other person convicted at the same trial, may appeal to the High Court.”

5. Section 415(2) of BNSS has made provision for appeal from conviction and sentence by the Sessions Judge, the Additional Sessions Judge and any other Court where a sentence of imprisonment exceeding 7 years has been passed. On all three occasions, an appeal shall lie to the High Court.

6. Section 415(3) of BNSS has provided,

“415. Appeals from convictions.

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*(3) Save as otherwise provided in sub-section (2), any person,-
 (a) convicted on a trial held by Magistrate of the first class, or of the second class; or
 (b) sentenced under section 364; or
 (c) in respect of whom an order has been made or a sentence has been passed under section 401 by any Magistrate, may appeal to the Court of Session.”*

That is, all other convictions (unless covered by Sub-section (2) of Section 415, BNSS) shall lie to the Court of Sessions.

7. An “Assistant Sessions Judge” is not mentioned under Section 415(2), BNSS. Therefore, a sentence passed by the “Assistant Sessions Judge” within his jurisdiction is not appealable automatically to the High Court merely because the trial was before a Sessions Court. The appeal forum depends upon Section 415, BNSS read

harmoniously with the Appellate structure. The “Assistant Sessions Judge” is a post junior to the Sessions Judge. Therefore, the appeal should ordinarily lie before the Court of Sessions (Sessions Judge). The Sessions Judge may hear the appeal himself or assign it to any Additional Sessions Judge under Section 422, BNSS. This position is consistent with the long-standing appellate hierarchy under the repealed Cr.P.C., where an appeal from an Assistant Sessions Judge lay to the Sessions Judge, while appeals from Sessions Judge and Additional Sessions Judges lay directly to the High Court.

8. Section 415 (2), BNSS gives a direct appeal to the High Court only in two situations; where the conviction is by a “Sessions Judge” or an “Additional Sessions Judge”; and where the conviction is by any other Court and the sentence exceeds seven years. In the instant case however, neither of these conditions are satisfied. Neither the trial was done by a “Sessions Judge” or an “Additional Sessions Judge” nor the sentence was for more than 7 years, it was for 2 years instead. Therefore, Section 415(2) of BNSS appears to be inapplicable.
9. BNSS deliberately omits the office of “Assistant Sessions Judge” from Section 8 thereof as well as from Section 415. A judgment of Telangana High Court in ***Banda Apparao Vs. State of Telangana [Criminal Appeal No. 966 of 2024 (decided on November 08, 2024)]*** may be referred to in this regard in which the Court has observed that BNSS no longer recognized the category of “Assistant Sessions Judge”. Consequently, an “Assistant Sessions Judge” falls within the expression “any other Court” in Section 415 (2) of BNSS. Since Section 415 (2) requires a sentence of more than 7 years, only such cases would go to the High Court and otherwise the appeal would not lie

to the High Court. Although, the said case before the Telangana High Court arose in context of determining the forum for a victim's appeal against acquittal, the Court's interpretation of Section 415 of BNSS is directly relevant.

- 10.** In the instant case, the sentence imposed is for two years imprisonment with fine which definitely stands less than that of a 7 year span. Assistant Sessions Judge who has delivered the judgment and sentence, falls within the purview of "any other Court" as described in the statute. Hence, Section 415(2), BNSS is excluded and the Appellate Forum remains to be the Court of Sessions (the Sessions Judge).
- 11.** Accordingly, the appellant is directed to file an appeal afresh against the judgment impugned before the learned Sessions Judge, Alipurduar.
- 12.** Delay in filing the appeal, if any, due to pendency of the instant appeal, is condoned.
- 13.** Let no coercive steps be taken against the appellant in the meantime, till the appeal is filed before the learned Sessions Judge afresh, as directed above.
- 14.** The present appeal being C.R.A. (SB) 13 of 2026 is thus **disposed of.**

(Rai Chattopadhyay, J.)