

WBCS010009642024



Presented on : 14-11-2024
Registered on : 14-11-2024
Decided on : 01-04-2026
Duration : 1 years, 4 months, 17 days

**IN THE COURT OF ADDITIONAL DISTRICT & SESSIONS JUDGE,
BENCH - II, CITY SESSIONS COURT,
BICHAR BHAWAN, CALCUTTA.**

-:- Present -:-

Koustuv Mukhopadhyay, WB-01059

Additional District & Sessions Judge,
Bench – II , City Sessions Court,
Bichar Bhavan. Calcutta, **(In charge)**.

Criminal Appeal No. 194 of 2024

An appeal U/S – 372 of the Code of Criminal Procedure (Section 413 pf BNSS, 2023) as against the order and judgment of acquittal dated 26.02.2024 passed by the Ld. Judicial Magistrate, 5th Court, Calcutta in connection with GR Case No.1113 of 2019.

Gunjan Shah

..... Appellant.

Vs

- 1. State of West Bengal
- 2. Murari Lal Agarwal,
- 3. Amar Nath Agarwal.

..... Respondents.

J U D G M E N T

(Heard on – 18.03.2026 & 25.03.2026)

(Delivered on – **01.04.2026**)

A Criminal Appeal is a legal remedy where the convict or prosecution requests a higher court to review and correct a conviction, sentence, or decision on grounds of legal, procedural, or factual error.

Introduction

1. This criminal appeal has been preferred by the de-facto complainant/Appellant against the judgment and order of acquittal dated 26.02.2024 passed by the Ld. Judicial Magistrate, 5th Court, Calcutta in **G.R. Case No. 1113 of 2019**, whereby the respondents (2 & 3)/accused persons were acquitted of the charges under **Sections 323/341/506/114** of **Indian Penal Code, 1860**, herein after referred to as IPC for the sake of brevity.

Brief Facts

2. The allegation in this case is that on 14.09.2019 at about 12.00 hours inside 127B, Arabinda Sarani, Kolkata-06, both the accused persons namely Murari Lal Agarwal and his son Amar Nath Agarwal, both being Ld. Advocates of this Court, being aided and abetted with each other wrongfully restrained the de-facto complainant/appellant namely, Gunjan Shah and

assaulted him with fists & blows and also pushed him by which he sustained injuries on his body.

3. Allegation is further that he was threatened of dire consequences.
4. Thereafter, on 19.09.2019 Gunjan Shah filed a written complaint before Shyampukur PS against the accused persons for the alleged incident.
5. Thereafter, formal FIR was drawn **u/s 341/323/506/114 of IPC** against both the accused persons and Shyampukur PS started investigation against them.
6. After completion of investigation, the IO of this case submitted charge sheet against the respondent no. 2 & 3 **u/s 341/323/506/114 of IPC**.
7. Cognizance was taken and thereafter trial began which concluded with a judgment of acquittal.

Grounds of Appeal

- The Ld. Trial Magistrate has acted with material irregularity, as the complainant/appellant bears no intentional fault in the matter; therefore, the impugned judgment and order warrant modification.
- The Ld. Trial Magistrate erred in law by passing the impugned order without proper application of judicial mind, rendering it liable to be dismissed/set aside.

- The Ld. Trial Magistrate failed to exercise the jurisdiction vested in him, despite clear allegations of criminal intent and malafide conduct in the complaint; hence, the impugned order deserves to be set aside and the record be remanded back to the Court of Ld. Trial Magistrate with a direction to hold trial denovo.
- The impugned judgment of acquittal is not sustainable in facts and law and should be set aside for the interest of justice.
- The Ld. Trial Magistrate, in passing the impugned judgment and order, failed to appreciate the scope of the provisions of the Code of Criminal Procedure, 1973 and consequently, the impugned judgment and order, suffers from a patent jurisdictional error and is liable to be set aside.
- The impugned order, if not set aside as prayed for in the present appeal, would occasion a failure of justice.

Submission of parties.

8. Heard Ld. Advocate for the appellant, Ld. Advocate for the State, and Ld. Advocate for the respondent no. 2 & 3.
9. The Ld. Advocate for the appellant prayed for annulling the impugned judgment on the ground stated in the memorandum of appeal.
10. Per contra, the Ld. Advocate for the respondents submitted that nothing is wrong with the impugned judgment and the same deserves to be affirmed.

Points for Determination

- ➔ Whether the impugned judgment and order of acquittal passed by the Ld. Trial Magistrate suffers from any kind of illegality?
- ➔ Whether the impugned judgment and order of acquittal passed by the Ld. Trial Magistrate invites interference by this Appellate Court?

Decision with reasons

11. Both the points for determination are taken up together for a joint discussion for the sake of brevity.
12. In this case, a total of four witnesses were examined, namely PW1 to PW4.
13. PW1, the wife of the complainant, Kriti Shah, stated in her examination-in-chief that no incident of assault occurred on 14.09.2019.
14. PW2, Surojdevi Nawalgari, deposed that no incident occurred at the chamber of Ld. Advocate Murari Lal Agarwal on 14.09.2019; however, PW1 and PW3 were present at the chamber on that date.
15. PW3 is a vital witness in this case.
16. It transpires from the record that he was very reluctant to depose in this case. He was issued warrant of arrest (W/W) once to ensure his presence. He surrendered but subsequently he stopped appearing in this case for which the Ld. Trial Magistrate closed his evidence and proceeded with the case.

17. According to the Ld. Advocate for the appellant, the Ld. Trial Magistrate hurriedly closed his evidence and proceeded with the case.
18. After considering the Trial Court Record, I am of the view that the Ld. Trial Magistrate did to the appellant what he deserves particularly after considering his conduct which compelled this Court to construe that he was not only negligent but also misused the time of the Court and I am further to construe that he intentionally evaded the process of Court to harass the accused persons and that aspect raises a doubt about bonafide intention on their part.
19. The Ld. Trial Magistrate did not approach in a hurried manner rather it gave more than ample opportunity to the de-facto complainant though he misused the same.
20. Considering the over all outcome of the evidence and after considering the depositions of all the prosecution witnesses including the Investigating Officer, it appears that the Ld. Trial Magistrate rightly came to the conclusion that the trial must conclude with a judgment of acquittal.
21. The evidence of other prosecution witnesses makes it crystal clear that no way prosecution could prove the allegation for which I hold that I find no irregularity or illegality in the impugned judgment.
22. The instant appeal is dismissed on contest, without any order as to costs.

23. In view of the foregoing, the appeal lacks merit, and the impugned judgment dated 26.02.2024 is hereby affirmed.

Conclusion

24. Memorandum of appeal seems to be sufficiently stamped.

25. Hence, it is,

O R D E R E D

that the instant Criminal Appeal No. 194 of 2024 be and the same is hereby dismissed on contest and on merit, without any order as to costs.

26. The judgment and order of acquittal dated 26.02.2024 passed by the Ld. Judicial Magistrate, 5th Court, Calcutta in G.R. Case No. 1113 of 2019 is hereby affirmed.

27. Let a copy of this judgment, along with the Trial Court Record (TCR), be sent to the Ld. Judicial Magistrate, 5th Court, Calcutta for information and necessary action.

28. Stay order, if any, stands vacated.

29. Office to make note in the germane registers accordingly.

30. Let a PDF copy of the instant judgment be uploaded in the CIS within 48 Hours from now as per **Rule 186A** of the **Cr.R.O** of **Hon'ble High Court, Calcutta**.

31. Let a copy of this judgment along with the Trial Court Record be sent back to the Court of Ld. Judicial Magistrate, 5th Court for his information and necessary action.

32. Dictated & corrected by me on this **25th day of March, 2026**
and the judgment is signed, sealed & delivered.

Dictated & Corrected.

(Koustuv Mukhopadhyay)
(WB-01059)
Addl. Dist. & Sessions Judge,
Bench - II (In charge)
City Sessions Court,
Calcutta.

(Koustuv Mukhopadhyay)
(WB-01059)
Addl. Dist. & Sessions Judge,
Bench - II (In charge)
City Sessions Court,
Calcutta.