

CRR 4322 of 2025

**Naushed alias Dipak Hari
Vs.
State of West Bengal & Anr.**

Mr. Asis Bhattacharyya

Mr. Lucky Parta

... ... for the petitioner

Mr. Arindam Sen

Mr. Mujibar Ali Naskar

... ... for the State

1. The matter is taken up for hearing. The learned advocate for the petitioner is present. The learned advocate representing the State is also present. Despite service, none appears on behalf of the Kolkata Municipal Corporation.
2. This revisional application is directed against the judgment and order dated 22nd May, 2025, passed by the learned Additional District and Sessions Judge, 2nd Fast Track Court, City Sessions Court, Bichar Bhavan, in Criminal Appeal No. 109 of 2021, arising out of the judgment of conviction dated 27th January, 2021, passed by the learned Municipal Magistrate, 2nd Court, Calcutta, in connection with Criminal Misc. Case No. 87490 of 2015.

3. The petitioner was originally convicted under Section 401A of the Kolkata Municipal Corporation Act, 1980, which provides:

"Every person who erects or adds to any building in contravention of the provisions of section 392 or section 393... shall be punishable with imprisonment for a term which may extend to five years and also with fine which may extend to fifty thousand rupees."

4. By the impugned judgment, the learned Appellate Court, while affirming the conviction, took a 'commensurate and lenient view' regarding the sentence. Considering that the petitioner had no criminal antecedents and that "substantial justice" would be served by waiving corporal punishment, the learned Judge reduced the substantive sentence of three years to "Till Rising of the Court" (TRC). However, the fine of Rs. 50,000/- was affirmed, with a default clause of six months' simple imprisonment.

5. The grievance of the petitioner before this Court today is narrow yet significant. It is submitted that the petitioner is ready and willing to deposit the fine of Rs. 50,000/- to satisfy the sentence. However, when the petitioner approached the learned Trial Court for such deposition, the learned Magistrate purportedly declined to accept the same on the ground that the period for payment had expired, or that the order of the Appellate Court did not specify a timeframe for such payment. Consequently, the

petitioner remains under the imminent threat of being committed to prison for the default term of six months.

6. Learned advocate for the petitioner argues that the refusal to accept the fine is a technical obstruction that defeats the very purpose of the leniency granted by the Appellate Court. He further draws the attention of this Court to the various discrepancies in the prosecution case, including the identity of the accused, noting that the petitioner "Dipak Hari" is being incorrectly identified with the name "Naushed."
7. Learned advocate for the State, in his usual fairness, submits that the realization of the fine is the primary object of the penal provision in matters of unauthorized construction. He suggests that a specific direction be given to the Trial Court to accept the amount within a fixed window.
8. I have considered the rival submissions and perused the materials on record. It is a settled principle of law, as observed by the Hon'ble Supreme Court in *Shanti Lal v. State of M.P.* (2007) 11 SCC 243, that the term of imprisonment in default of payment of fine is not a sentence, but a penalty which the culprit incurs by not paying the fine. When a convict expresses a bona fide intent to pay the fine affirmed by a superior court, the doors of the Trial Court cannot be shut on technicalities.

9. Furthermore, the learned Appellate Court in its order dated 22.05.2025 omitted to mention a "date certain" for the payment of the fine. In the absence of a specific deadline, the petitioner cannot be characterized as a "willful defaulter" under the eyes of the law. To compel the petitioner to undergo six months of imprisonment when he is standing with the fine amount in hand would be a travesty of justice and would render the Appellate Court's modification of sentence illusory.

10. In view of the above, it is ordered:

- i. The petitioner is directed to deposit the fine of Rs. 50,000/- (Rupees Fifty Thousand only) before the learned Municipal Magistrate, 2nd Court, Calcutta, within a period of four (4) weeks from this date.
- ii. The learned Municipal Magistrate is peremptorily directed to accept the said fine amount if tendered within the stipulated period.
- iii. Upon such payment, the petitioner shall be deemed to have satisfied the sentence, and the default clause of simple imprisonment shall stand vacated.
- iv. If the petitioner fails to deposit the amount within the time prescribed herein, the default sentence as affirmed by the learned Appellate Court shall immediately become executable.

v. The other findings of the learned Appellate Court, including the setting aside of the demolition order under Section 584 (noting the pendency of the issue before a Larger Bench of this Court), remain undisturbed.

11. With these observations and directions, the revisional application being C.R.R. No. 4322 of 2025 is disposed of.

12. The report filed by the State be kept with the record.

13. All parties are to act on the server copy of this order. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Uday Kumar, J.)