

16.09.2022

Item No.83

Ct.No.1

K.B/b.r.

CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
Criminal Appellate Jurisdiction

CRA No. 22 of 2021
With
IA No. CRAN 1 of 2021

In the matter of: **C.T. Raghunandan @ Raghunandan**
.....Appellant

Mr. Sekhar Kumar Basu, Sr. Adv.
Mr. Kushal Kumar Mukherjee
Mr. Diptangshu Basu
Mr. Surajit Basu

...for the Appellant.

Mr. Aditi Shankar Chakraborty, Ld. APP
Mr. Sourav Ganguly

.....for the State

This is an application for bail in connection with appeal. The appeal was admitted by an order of the concurrent Hon'ble Division Bench dated 11th August, 2021. The records were called for and a direction was passed for preparation of Paper Books.

Mr. Sekhar Kumar Basu, Learned Senior Counsel, submits on two points. First, that the judgement and order of conviction of the learned Trial Court has been rendered *void ab initio* in view of the provisions of Section 475 Cr.PC. Expanding his submission, Mr. Basu points out that since the

appellant/the accused was a member of an Armed Force to which proceedings under a Court-Martial applies, it was the duty of the Learned Magistrate to transfer the trial to the Court Martial. Since the trial was not transferred to the Court-Martial and the learned Trial Court proceeded to conclude the trial and convicted the accused, the appellant/accused is entitled to raise such jurisdictional point even at the appellate stage.

The second contention raised by Learned Senior Counsel pertains to the evidence of PW-10 and, who is the sole eye witness to the incident.

Referring to the evidence of PW-10 as recorded before the Learned Trial Court, Mr. Basu submits that having regard to the background of PW-10 which, as recorded by the learned Trial Court, is rural and rustic, such evidence is unreliable.

Per contra, Mr. Ganguly, Learned Counsel appearing for the State, submits that the learned Trial Court has tried the appellant/the accused on IPC offences under Sections 302/201 IPC. The learned Trial Court is hence jurisdictionally empowered to do so.

The stand taken by the appellant/the accused on the point of lack of jurisdiction of the learned Trial Court under Section 475 Cr.PC, was not taken at the earliest instance before the competent Court.

In the appeal, the point of lack of jurisdiction can not be taken at the stage of a prayer for bail in connection with the appeal.

Having heard the parties and closely considering the materials placed, this Court is persuaded that the stand taken by the appellant/the accused is impermissible at the stage of considering the application for bail in connection with the appeal.

It is also the *prima facie* finding of this Court that the culpability of the appellant/the accused as emanating from the evidence of PW-10 can be disproved only at the trial and is misconceived at this stage on a prayer for grant of bail in connection with the appeal.

The prayer of bail stands accordingly **rejected**.

IA No. CRAN 1 of 2021 stands **dismissed**.

It is found from the records that Lower Court Records (LCR) has been received. **Registry** is

accordingly directed to prepare the requisite number of Paper Book(s) within a period of four weeks.

On completion of Paper Book(s), the appellant is given liberty to mention the matter for early hearing of the appeal.

All concerned parties shall act in terms of the copy of the order downloaded from the official website of this Court.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties on compliance of necessary formalities.

(Krishna Rao J.)

(Subrata Talukdar, J.)