

IN THE HIGH COURT AT CALCUTTA
[CIRCUIT BENCH AT PORT BLAIR]

CRR/3/2025

Smti. Laxmi Roy

Vs.

The State

Mr. Gopala Binnu Kumar ... for the petitioner

Mr. Sumit Karmakar ...for the State

January 31, 2025
[AKB]
Item no. 8

1. This revisional application challenges the judgment dated 23rd August 2024, passed by the learned Additional Sessions Judge, North and Middle Andaman District, Mayabunder, in Criminal Appeal No. 11 of 2023, as well as the order dated 7th September 2022, passed by the Judicial Magistrate First Class, North and Middle Andaman District, Mayabunder, in G.R. Case No. 283 of 2011. By the order dated 7th September 2022, the petitioner was convicted for the commission of offences under Sections 147/149/342/324/504/506 of the Indian Penal Code, 1860 (IPC) and sentenced as follows:

- i) For the offence under Section 324 of the IPC, the petitioner was sentenced to undergo simple imprisonment for six months.
- ii) For the offence under Section 147 of the IPC, the petitioner was sentenced to simple imprisonment for two months.

Additionally, the petitioner was directed to pay a fine of Rs. 500/- for the offences under Sections 342, 504 and 506 of the IPC. In the event of failure

to pay the fines, an additional sentence of 15 days of simple imprisonment for each default would be imposed.

The substantive sentences were directed to run concurrently. However, in the event of non-payment of the fines, the imprisonment sentences were directed to run consecutively.

2. Mr. Kumar, learned Advocate for the petitioner, argues that the conviction is flawed, asserting that the Trial Court's judgment finding the petitioner guilty is based on no evidence. The prosecution has failed to present any evidence establishing the petitioner's involvement in the alleged offences. He contends that, even if it is accepted that the petitioner was present at the scene of the incident, there is no evidence of any overt act by the petitioner that contributed to the commission of the offences.
3. Additionally, he points out that, despite the petitioner being sentenced to six months of imprisonment, the trial court did not consider the possibility of extending the benefits of the Probation of Offenders Act in accordance with its letters and spirit. He argues that the Trial Court observed that it was not a fit case to extend benefits of the Probation of Offenders Act in favour of the convicts including the petitioner. He argues that though the right to remain silence during the criminal trial is a precious right granted to an accused person under Indian Criminal jurisprudence but in the denial of prosecution version by the accused person during his examination under Section 313 of the Code of the Criminal Procedure was cited as a basis for declining the benefits of Probation of Offenders Act.

4. He argues that these issues were raised before the Appellate Court, but the Appellate Court glossed over the same and did not return any finding on the same. According to him, such infirmities warrant interference with the orders under assail in this revision.
5. Mr. Karmakar, learned Advocate appearing for the respondents submits that the petitioner has challenged the concurrent findings of conviction and order of sentence. He submits that the petitioner cannot invite the Court to re-appreciate the evidence and he asserts that prosecution brought sufficient evidence which laid the learned Trial Court to hold the petitioner as guilty and to pass order of sentence and the Appeal Court also upheld the said judgment of conviction and order of sentence. He submits that considering the gravity of the offence the learned Court below has rightly did not extend the benefits of Probation of Offenders Act.
6. Heard the learned Advocates. Perused the materials on record.
7. Needless to state that the provisions of Sections 395 to 401 of the Code, when read together, do not suggest that the High Court's revisional power can be exercised as a second appellate power. The power of revision under Section 401 of the Code can only be exercised in exceptional cases where there is a glaring procedural defect or a manifest error of law that has resulted in a flagrant miscarriage of justice. It is well-established that re-examining evidence in revision is highly restricted and generally not allowed unless there has been a clear miscarriage of justice. In revision, the court focuses solely on procedural errors, irregularities, failure to consider evidence properly, or incorrect application of the law.

8. However, for the limited purpose of determining whether the decision of the learned Trial Court regarding the petitioner is perverse, I have briefly examined the evidence. Upon reviewing the Trial Court's order, it appears that the court declined to extend the benefits of the Probation of Offenders Act to the convicts, including the petitioner, on the grounds that the accused, including the petitioner, had denied the prosecution's case and did not present a specific defense. Furthermore, the Trial Court failed to consider, given the fact that the petitioner is a middle-aged woman, whether the benefits of the Probation of Offenders Act could have been extended to her.
9. Taking into account all these factors, and after considering the submissions made by the respective parties and upon perusal of the record, I am of the opinion that a strong and arguable case has been made out in this revision. The issues raised herein need to be addressed, and unless the interim relief, as prayed for is granted, the petitioner will be highly prejudiced.
10. Consequently, the part of the order dated 23rd August 2024, whereby the learned Appellate Court directed the petitioner to surrender before the learned Trial Court within one month is stayed and the order of sentence imposed by the learned Trial Court, are suspended till the end of March, 2025 or until further order, whichever is earlier.
11. Let the Trial Court record be called for.
12. List the matter before the next Circuit Bench for final hearing, subject to its convenience.

(Partha Sarathi Chatterjee, J.)