

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

CRA 722 of 2019
CRAN 4 of 2022

Dipak Kumar Mondal & Ors.

-Vs-

The State of West Bengal

For the Petitioner: Mr. Milon Mukherjee, Sr. Adv.,
Mr. Biswajit Manna, Adv.

For the State: Mr. Swapan Banerjee, Adv.,
Mrs. Purnima Ghosh, Adv.

Heard on: 28 February, 2023.

Judgment on: 28 June, 2023.

BIBEK CHAUDHURI, J. : -

1. This is an application for appropriate order/modification of the Judgment and order dated 9th June, 2022 passed by this Court in CRA 722 of 2019 filed by the applicant herein.

2. The appellants were convicted and sentenced to rigorous imprisonment of 7 years with fine of Rs. 5,000 each under Section 326/34 and Section 307/34 of the Indian Penal Code by an order dated 29th November, 2019 passed by the Learned Additional Sessions Judge, Raghunathpur, Purulia. Being aggrieved by the above order, the appellants filed the instant appeal and this Court by an order dated 9th

June, 2022 set aside the order of the Learned trial Court under Section 326/34 and Section 307/34 of the IPC and convicted them under Section 324/34 of the IPC with a fine of Rs. 10,000 each, in default to suffer imprisonment for six months each.

3. Learned advocate for the applicant states that the above sentence was passed considering the prayer made on behalf of the applicant that the applicant is a teacher by profession and if sentenced to imprisonment, he will be jobless. Thereafter the applicant duly deposited the fine amount before the Learned Court below. The applicant approached the school authorities of Dhakia Anchalik Vidyaniketan at Ranjitpur for joining his service. However, upon production of documents, the school authorities rejected the prayer of the applicant for joining his service. Being aggrieved, the applicant filed the instant application praying direction upon the school authorities to allow the applicant to join and continue his service.

4. Learned advocate for the applicant further states that this Court took a lenient view towards the applicant while passing the order of sentence as the applicant was a teacher and any imprisonment to the applicant would make him jobless. The applicant prays for direction upon the school authorities that the order of affirmation of conviction would not stand in the way of the applicant joining his service.

5. The learned Advocate for the applicant submits that the court can take into consideration the principle laid down in the Probation of Offenders Act and pass an order keeping the appellants under probation

because a sentence of fine also carries with it the consequence of imprisonment in case the accused fails to pay the fine. As the object of Probation of Offenders Act is to avoid imprisonment of the person covered by the provisions of that Act, the said object cannot be set at naught by imposing a sentence of fine which would necessarily entail imprisonment in case there is a default in payment of fine. Therefore, the rehabilitative purpose of the Probation of Offenders Act ought to be taken into consideration in the instant case owing to the reason that the applicants are the teachers of school and they will not be able to join their service if the sentence of fine is imposed against them.

6. It appears from the record that CRA 722 of 2019 was disposed of on 9th June, 2022 convicting the accused persons/appellants/applicants for the offence punishable under Section 324/34 of the IPC and sentencing them to pay fine of Rs.10,000/- each.

7. Section 362 of the Code of Criminal Procedure states:

362. Court not to alter judgment.- Save as otherwise provided by this Code or by any other law for the time being in force, no Court when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error.

8. The above provision is abundantly clear that a clerical or arithmetical error can only be corrected after pronouncing of a judgment. Once judgment is pronounced, even the High Court has no jurisdiction to entertain application for grant of permission to compound the offence. In

view of the clear provision of Section 362, the High Court has no jurisdiction under Section 482 of the Code of Criminal Procedure to alter the earlier judgment after it has been signed. No criminal court can review its own judgment after it is signed. It is an accepted principle of law that when a matter has been finally disposed of by a Court, the court is, in the absence of a direct statutory provision, functus officio and cannot entertain a fresh prayer for relief in the matter unless and until the previous order of final disposal has been set aside or modified to that extent. The singular exception to the said statutory bar is correction of clerical or arithmetical error by the Court. The decision of the Hon'ble Supreme Court in **Abdul Basit @ Raju & Ors. vs. Mohd. Abdul Kadir Chaudhary** reported in **(2014) 10 SCC 754** may be relied on in support of the observation made hereinabove.

9. In view of the above discussion I do not have any power or authority to alter the order of sentence passed in CRA 722 of 2019. The application is accordingly rejected.

(Bibek Chaudhuri, J.)