
(2025) 07 CAL CK 0825
In the Calcutta High Court, Appellate Side
Case No : C.R.R. 2282 Of 2024

Sahajamal Sk. & Ors

APPELLANT

Vs

State Of West Bengal & Anr

RESPONDENT

Date of Decision : 16-07-2025

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 400

Citation : (2025) 07 CAL CK 0825

Hon'ble Judges : Debangsu Basak, J;Md. Shabbar Rashidi, J

Bench : Division Bench

Advocate : Shouvik Mitter, Ipsita Ghosh, Samim Ahammed, Arka Ranjan Bhattachary, Gulsanwara Pervin, Debasish Roy, Anasuya Sinha, Rajnandini Das

Final Decision : Disposed Of

Judgement

Debangsu Basak, J

1. Criminal Revisional application is directed against the order dated May 14, 2024 passed in GR 320 of 2010 by the learned Additional Chief Judicial Magistrate, Bolpur, Birbhum. It is at the behest of some of the accused in such criminal case.

2. Learned advocate appearing for the petitioners submits that, the petitioners are day labourers. One of the accused in the criminal case where the petitioners stand entangled is a former Member of Parliament. He submits that, the incident alleged is of Bolpur. Petitioners are now required to defend themselves at the designated Court at Kolkata which is far away from Bolpur. It is inconvenient for the petitioners to defend themselves at the trial, if it takes place at Kolkata.

3. Learned advocate appearing for the petitioners submits that, the designated Court, cannot assume jurisdiction over a subject-matter of a criminal proceeding, which relates to a former or past Member of Parliament or a member of the State Legislative Assembly. He submits that, the concerned cut of date should be date when the Court is taking cognizance. As on that date, if the Court finds that, the

concerned Member of Parliament (MP) or the Member of Legislative Assembly (MLA) is no longer holding such post then, it should not assume jurisdiction. It should then relegate the trial to the appropriate Court.

4. Learned advocate appearing for the petitioners refers to Section 400 of the Criminal Procedure Code. He submits that, convenience of the accused is a material consideration.

5. Learned advocate appearing for the petitioners refers to (2021) 20 Supreme Court Cases 606 (Ashwini Kumar Upadhyay and others versus Union of India and others) as also to the subsequent directions issued by the Hon'ble Supreme Court in (2024) 1 Supreme Court Cases 185 (Ashwini Kumar Upadhyay versus Union of India and another). He submits that, although, Ashwini Kumar Upadhyay and Others (1) (supra) speaks of former and present MP/MLA, the second Ashwini Kumar Upadhyay (supra) does not refer to former MP/MLAs and deals with present MP/MLAs. Therefore, in the facts and circumstances of the present case, since, one of the accused concerned is no longer a Member of Parliament, therefore criminal case should not be considered by the designated Court as directed by the impugned order.

6. Learned advocate for the victim family submits that, the second Ashwini Kumar Upadhyay (supra) was rendered in continuation of the first Ashwini Kumar Upadhyay (supra). He submits that, a distinction sought to be introduced by the petitioners are artificial and the same should not be accepted.

7. Learned advocate appearing for the State submits that, the criminal liability accrues on the date of commission of the offence and therefore, the material consideration should be that on the date of commission of the offence whether, the accused concerned was a MP/MLA or not. In the facts and circumstances of the present case, she submits that, there is overwhelming evidence to support that, MP concerned although no longer holding such post, acted qua a MP, in relation to the incident. On the date of the offence such person was a sitting MP.

8. Ashwini Kumar Upadhyay and others (1) (supra) issued various directions which includes, setting up of a designated Court for trial of offences against MPs/MLAs. Such directions were issued in order to expedite the hearing and disposal of such cases.

9. Ashwini Kumar Upadhyay (2) (supra) is in continuation of Ashwini Kumar Upadhyay and others (1) (supra). It is stated to be so in paragraph 11 of the Ashwini Kumar Upadhyay (2) (supra).

10. Therefore, on the strength of Ashwini Kumar Upadhyay (1) and (2) (supra), we are not in a position to distinguish between the accused who was a MP/MLA at the date(s) of the offences being committed and such person demitting such status subsequently. The distinction sought to be introduced by the petitioners are unacceptable in view of the directions issued by the Supreme Court in Ashwini Kumar Upadhyay and others (1) (supra) and Ashwini Kumar Upadhyay

(2) (supra).

11. Both the authorities of the Supreme Court noted above, required establishment of a designated Court. High Court acting in terms of such direction issued a notification setting up of a designated Court on temporary basis. Notification establishing such Court, in terms of the directions issued by the Hon'ble Supreme Court in Ashwini Kumar Upadhyay and others (1) (supra) and Ashwini Kumar Upadhyay (2) (supra) is not under challenge.

12. It is claimed that, the petitioners will suffer inconvenience in the event, they are to stand trial at the designated Court. With respect, we are in a position to accept such a plea. Petitioners can be extended legal assistance, if they apply and found eligible for it. Moreover, the designated Court was set up in terms of the directions issued by the

Hon'ble Supreme Court. The notification establishing the same is not under challenge.

13. We find from the records that, the petitioners obtained the initial interim order from the learned Single Judge of the High Court. It is sad that, petitioners after obtaining the services of an advocate chose to ignore the directions of Ashwini Kumar Upadhyay and others (1) (supra) and Ashwini Kumar Upadhyay (2) (supra) and invited the learned Single Judge to pass interim order. Since, petitioners before us claim themselves to be day labourers we refrain ourselves from the proceeding any further against the petitioners. We, however, place on record our dissatisfaction as to the conduct of the petitioners. We put the petitioners on notice that any further misadventure at any stage of the proceeding will be dealt with appropriately.

14. CRR 2282 of 2024 alongwith connected applications are disposed of.