BEFORE
HON'BLE MR. JUSTICE S.R. SEN
CRL.A. No. 4 of 2014

01.08.2014

Heard Mrs. N.G. Shylla, learned counsel for the State, who submits that, as per the provision of Section 374 Sub-section 2 Cr.P.C no appeal lies before the High Court where sentence is less than 7(seven) years.

In reply to the submission advanced by the learned counsel for the State, Mrs. N.G. Shylla, the learned counsel for the appellant, Mr. B. Bhattacharjee submits that, Section 374 Sub-section 2 has got two parts, and first part needs to be considered in its proper preposition which is reproduced herein below:

> *"374 (2) Any person convicted on a trial held by a Sessions Judge or an Additional Sessions Judge or on a trial held by any other Court in which a sentence of imprisonment for more than seven years has been passed against him or against any other person convicted at the same trial; may appeal to the High Court".*

I have carefully read Sub-section 2 of 374 Cr.P.C and after going through the contents and language of the law laid down there, it also appears to me that Sub-section 2 of 374 Cr.P.C has got no bar. First part speaks about the conviction on a trial by a Sessions Judge or an Additional Sessions Judge and second part speaks about the trial held by any other Court. The section also makes it clear that, when a trial is held by any other court besides the Sessions Judge or an Additional Sessions Judge, the trial shall lie before the High Court only when sentence is more than 7(seven) years. On the other side in the first part, if the conviction granted by Sessions Judge or an Additional Sessions Judge, the law is silent about the period of sentence.

The learned counsel for the appellant, Mr. B. Bhattacharjee while submitting his case also relied on ***2008 (3) GLT 420: Faizur Rahman (MD) @ Ali .....Petitioner versus State of Assam ..... Opposite Party***.

In the above reference case, the Hon'ble Gauhati High Court was pleased to observe in Para 6 which is as under:

> *"6. From a careful examination of Section 374(2), what clearly emerges is that this sub-section stands divided into two parts. While the first part relates to a person, who may have been convicted, on trial, by a Sessions Judge or an Additional Sessions Judge, the second part relates to the person, who on a trial held by any other court, stands convicted. If the order of conviction is by a Sessions Judge or an Additional Sessions Judge, the appeal would lie to the High Court irrespective of the term for which the convicted person may have been sentenced to; whereas, when a person is convicted by any Court, other than a Sessions Judge or an Additional Sessions Judge, and the sentence passed against him is for a term not exceeding seven years of imprisonment, the appeal would not lie to the High Court; rather, the appeal would lie, in such a case, in terms of Section 374(3), to the Court of Sessions".*

After considering the submissions advanced by the learned counsel for the State, Mrs. N.G. Shylla as well as the learned counsel for the appellant, Mr. B. Bhattacharjee and taking into consideration the provision laid in Sub-section 2 of 374 Cr.P.C as well as the judgment referred above, I have come to the conclusion and I am of the considered view that appeal lies and the appeal is maintainable. Accordingly, the appeal is hereby admitted.

Issue notice to the respondent. However, since the sole respondent State is present through Mrs. N.G. Shylla who has accepted the notice, no formal notice is called for. Call for the Lower Court case record.

List this matter after 2(two) weeks.

JUDGE

D. Nary

BEFORE
HON'BLE MR. JUSTICE S.R. SEN
CRL.M.C. No. 8 of 2014

01.08.2014

List this Misc. Case along with ***CRL.A. No. 4 of 2014*** after 2(two) weeks.

JUDGE

D. Nary

BEFORE
HON'BLE MR. JUSTICE S.R. SEN
WP(C) No. 333 of 2012

01.08.2014

Heard Mr. R. Kar, learned counsel appearing for and on behalf of the petitioner.

Also heard the learned State counsel, Mr. R. Gurung who is present along with the Director of Fisheries, Government of Meghalaya, Shillong.

Hearing concluded.

Judgment and order reserved.

JUDGE

D. Nary