

The State of West Bengal

v.

Jayeeta Das

(Criminal Appeal No. 2128 of 2024)

18 April 2024

[B.R. Gavai and Sandeep Mehta,* JJ.]

Issue for Consideration

Whether the order dated 07.04.2022, whereby the Chief Judge cum City Sessions Court permitted the addition of the offences under Unlawful Activities (Prevention) Act, 1967 to the case suffer from any illegality or infirmity; whether the extension of remand by the Chief Metropolitan Magistrate beyond the period of 90 days was illegal.

Headnotes

Unlawful Activities (Prevention) Act, 1967 – National Investigation Agency Act, 2008 – FIR registered u/s. 121A, 122, 123, 124A, 120B of IPC – I.O. filed an application for addition of charges u/s. 16, 18, 18B, 20, 38 and 39 of UAPA – CMM forwarded the matter to Chief Judge, City Sessions Court – The Chief Judge by order dated 07.04.2022 permitted addition of offences under the provisions of UAPA – Legality:

Held: A bare perusal of sub-section (3) of Section 22 of NIA Act would make it clear that until a Special Court is constituted by the State Government under sub-Section (1) of Section 22, in case of registration of any offence punishable under UAPA, the Court of Sessions of the division, in which the offence has been committed, would have the jurisdiction as conferred by the Act on a Special Court and a fortiori, it would have all the powers to follow the procedure provided under Chapter IV of the NIA Act – Admittedly, the present case involves investigation by the State police, and therefore, the provisions of Section 22 would be applicable insofar as the issue of jurisdiction of the Court to try the offences is concerned – Further, it is not in dispute that the State of West Bengal had not exercised the power conferred upon it by Section 22 of the NIA Act for constituting a Special Court for trial of offences set out in the Schedule to the NIA Act and hence, the Sessions Court within whose jurisdiction, the offence took place

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which would be the Chief Judge cum City Sessions Court in the case at hand, had the power and jurisdiction to deal with the case by virtue of the sub-section (3) of Section 22 of the NIA Act – Hence, the order dated 07.04.2022, whereby the Chief Judge cum City Sessions Court permitted the addition of the offences under UAPA to the case does not suffer from any illegality or infirmity. [Paras 24, 25, 29, 30]

Unlawful Activities (Prevention) Act, 1967 – Extension of remand by Chief Metropolitan Magistrate beyond the period of 90 days – Legality:

Held: Under the proviso to Section 43D(2), the Court has been given the power to extend and authorise detention of the accused beyond a period of 90 days as provided u/s. 167(2) CrPC – A plain reading of Section 2(1)(d) of UAPA would clearly indicate that the same admits to the jurisdiction of a normal criminal Court and also includes a Special Court constituted under Section 11 or Section 22 of the NIA Act – In view of the definition of the ‘Court’ provided under Section 2(1)(d) of UAPA, the jurisdictional Magistrate would also be clothed with the jurisdiction to deal with the remand of the accused albeit for a period of 90 days only because an express order of the Sessions Court or the Special Court, as the case may be, authorising remand beyond such period would be required by virtue of Section 43D(2) of UAPA – Hence, to the extent the Chief Metropolitan Magistrate extended the remand of the accused beyond the period of 90 days, the proceedings were grossly illegal. [Paras 33-36]

List of Acts

Unlawful Activities (Prevention) Act, 1967; National Investigation Agency Act, 2008; Code of Criminal Procedure, 1973.

List of Keywords

Offences; Addition of offences; Jurisdiction; Remand; Extension of remand.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 2128 of 2024

From the Judgment and Order dated 11.05.2023 of the High Court at Calcutta in CRR No. 3180 of 2022

Digital Supreme Court Reports**Appearances for Parties**

Siddhartha Dave, Sr. Adv., Kunal Chatterji, Ms. Maitrayee Banerjee, Rohit Bansal, Ms. Kshitij Singh, Sohgom Sau, Advs. for the Appellant.

R. Mahadevan, V. Balaji, C. Kannan, Nishant Sharma, Ms. Adviteeya, Rakesh K. Sharma, Advs. for the Respondent.

Judgment / Order of the Supreme Court**Judgment****Mehta, J.**

1. Leave granted.
2. Heard learned counsel for the parties and perused the material available on record.
3. The State of West Bengal has approached this Court by way of this appeal for assailing the legality and validity of the judgment dated 11th May, 2023 passed by the High Court of Calcutta in C.R.R. No. 3180 of 2022.

Brief Facts:-

4. Based on written complaint dated 1st January, 2022 filed by the SI Raju Debnath, STF Police Station, Kolkata on 28th December, 2021 informing about recovery of an unclaimed black coloured bagpack lying abandoned at Sahid Minar containing some written posters of CPI(Maoist) and some incriminating articles about the activities of CPI(Maoist), FIR No. 01 of 2022 came to be registered at STF Police Station, Kolkata for the offences punishable under Sections 121A, 122, 123, 124A, 120B of the Indian Penal Code, 1860(hereinafter being referred to as 'IPC').
5. The respondent herein was apprehended on 29th March, 2022 and was produced before the learned Chief Metropolitan Magistrate, Calcutta on 30th March, 2022. The Investigating Officer conducted preliminary investigation and thereafter filed an application in the Court of learned Chief Metropolitan Magistrate praying for addition of offences punishable under Sections 16, 18, 18B, 20, 38 and 39 of the Unlawful Activities (Prevention) Act, 1967 (hereinafter being referred to as 'UAPA').

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6. Learned Chief Metropolitan Magistrate, in turn, forwarded the matter to learned Chief Judge, City Sessions Court, Calcutta(hereinafter being referred to as the 'Chief Judge') for considering the said application, vide order dated 5th April, 2022.
7. Learned Chief Judge, vide order dated 7th April, 2022 permitted addition of offences under Sections 16, 18, 18B, 20, 38, 39 of UAPA in the case and allowed the same to be investigated along with the existing offences for which the FIR had been registered. The Investigating Officer was directed to take the necessary steps before the learned Chief Metropolitan Magistrate.
8. The respondent filed a petition under Section 482 of the Code of Criminal Procedure, 1973(hereinafter being referred to as 'CrPC') before the High Court of Calcutta on 25th August, 2022 with a prayer to quash the order dated 7th April, 2022 passed by learned Chief Judge, Calcutta and all subsequent orders passed by the learned Chief Metropolitan Magistrate, Calcutta. While the aforesaid petition was pending, the learned Chief Judge, Calcutta passed an order dated 22nd September, 2022 extending the period of detention of accused upto 180 days under Section 43D(2)(b) of UAPA and permitted the investigating agency to file charge sheet beyond the period of 90 days but within 180 days.
9. The High Court proceeded to accept the petition vide order dated 11th May, 2023 and quashed the proceedings of the case registered against the respondent to the extent of the offences punishable under the provisions of UAPA, holding that only a Special Court constituted by the Central Government or the State Government as per the National Investigation Agency Act, 2008(hereinafter being referred to as 'NIA Act') had the exclusive jurisdiction to try the offences under UAPA. It was further held that as per Section 16 of the NIA Act, the Sessions Court was precluded from taking cognizance of the offences under UAPA and thus the order dated 7th April, 2022 and all subsequent proceedings taken thereunder were without jurisdiction.
10. The aforesaid order dated 11th May, 2023 allowing the petition filed by the respondent is under challenge at the instance of the State of West Bengal in this appeal by special leave.

Digital Supreme Court Reports**Submissions on behalf of appellant:-**

11. Shri Siddhartha Dave, learned senior counsel appearing for the appellant contended that the instant case involves investigation and prosecution by the state police and not by the Central Agency, i.e., National Investigation Agency. He urged that the proceedings would be governed by Section 22 of NIA Act and hence the High Court fell in grave error of law in quashing the proceedings by relying upon the provisions contained under Section 16 of NIA Act.
12. Learned senior counsel further urged that as the case was investigated by the State police and since no Special Court had been constituted by the State Government under Section 22(1) of NIA Act, the Sessions Court having jurisdiction over the division in which the offence was committed, was seized of the exclusive jurisdiction to try the offences as per Section 22(3) of NIA Act.
13. He further urged that since no Special Court was constituted, the jurisdictional Magistrate, who would be the Chief Metropolitan Magistrate in this case, has the jurisdiction to deal with the remand of the accused. Nonetheless, Shri Dave candidly conceded that the power to extend the period of detention beyond 90 days is exclusively vested with the 'Court' as defined under Section 2(1)(d) of UAPA which would be the jurisdictional Sessions Court in the present set of facts and circumstances.
14. Without prejudice to the above, the contention of the learned senior counsel was that since the accused never filed an application seeking default bail, after the expiry of 90 days and before filing of the charge sheet, the irregularity, if any, in the matter of granting remand stood cured and hence, the accused has lost the right to claim release on default bail. He thus implored the Court to accept the appeal and set aside the impugned judgment and permit the Sessions Court to proceed with the trial of the accused for the offences charged including those under UAPA.

Submission on behalf of Respondent:-

15. *Per contra*, learned counsel appearing for the respondent, vehemently and fervently urged that the view taken by the High Court while interfering with the order dated 7th April, 2022 is the only permissible and legal view in the extant facts and circumstances. He referred to the Gazette Notification dated 29th April, 2011 and urged that a Special

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Court has already been notified by the Central Government for the State of West Bengal and as such, all orders passed and actions taken by the Chief Judge and the Chief Metropolitan Magistrate pertaining to the offences under the UAPA are illegal and without jurisdiction.

16. As a consequence, the High Court was justified in exercising jurisdiction under Section 482 CrPC in quashing the patently illegal order dated 7th April, 2022 and all subsequent proceedings sought to be taken in furtherance thereof. He urged that the impugned order dated 11th May, 2023 is just and legal and does not warrant any interference. However, on the aspect of the grant of default bail to the accused, learned counsel candidly conceded that no prayer was ever made on behalf of the accused either in the Sessions Court or the High Court seeking default bail. The plank contention advanced on behalf of the respondent was that the proceedings before the Chief Judge and the Chief Metropolitan Magistrate are vitiated because both the Courts did not have the jurisdiction to proceed under the provisions of NIA Act and UAPA in light of the fact that Special Court had already been constituted for the State of West Bengal by the Central Government vide Gazette Notification dated 29th April, 2011 which was functioning.
17. Learned counsel implored the Court to reject the instant appeal.

Discussion and Conclusion:

18. For the sake of convenience, we would like to advert to the issues for determination formulated by the learned Single Judge of the High Court in the quashing petition:-
 - "i. Whether the court of sessions was entitled to entertain an application for extension of the period of remand in terms of the proviso to Section 43D (5) of the UAPA when no special court had been notified by the State of West Bengal under Section 22(1) of the National Investigating Agency Act, 2008.
 - ii. Whether the petitioner could have been remanded by the learned Magistrate after offences under UAPA had been added."
19. Since the validity of the order dated 7th April, 2022 is the main issue requiring adjudication in the case, we would like to reproduce the said order for ready reference:-

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**"IN THE COURT OF CHIEF JUDGE, CITY SESSIONS
COURT, CALCUTTA**

STF PS Case No. 01 dt. 01.01.2022

GR(S) 08 of 2022

Present: Siddhartha Kanjilal

Chief Judge, City Sessions Court, Calcutta. JO Code
WB01057

Order No. 02 dated 07.04.2022

Today is fixed for production of the accused person and passing order with regard to adding sections 16/18/18B/20/38/39 of the UA(P) Act to the initial charges u/s 120B/121/121A/122/123/ 124A of IPC.

Ld. PP in charge is present

Ld. Advocate for the accused files a fresh vakalatnama.

Seen the same. Let it be kept with the record.

IO is present along with CD.

Accused person namely, Joyeeta Das is produced from police custody.

Today one remand application was filed by the Assistant Commissioner of Police. STF, Kolkata and prayed for further police custody for further development of the investigation.

This Court finds that for effective investigation, the accused be remanded to police custody till 11.04.2022.

The investigation Agency is directed to maintain all the formalities as per guidelines of Supreme Court while keeping the accused in the custody in remand.

The accused is at liberty to report before the Ld. Court of CMM, Calcutta on the next date whether she has been physically or mentally tortured by the Investigation Agency while she was in custody.

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Now the application for adding the sections 16/18/18B/20/38/39 of the UA(P) Act is taken up for hearing.

Perused the record and application as well as case diary.

It is revealed from the CD that several incriminating documents, literatures, posters etc. related to the organizational agenda of the banned organization, CPI (Maoist) propagating for armed revolution in India to overawe the established democratically elected Government in the Country were recovered from the accused person relating to Terrorists Act against the Government.

As per the judgment passed by Hon'ble Justice Dr. Dhananjaya Y Chandrachud (Supreme Court) in connection with Criminal Appeal No. 1165 of 2021 the CJM Court of Sessions Court is the trial Court for the offences punishable under section UA(P) Act when no special Court has been notified by the State Government as per Section 27 of the NIA Act.

If that be the so then, any offence where UA(P) Act is involved, the CMM, Calcutta, herein is the remand Court and the Chief Judge, City Sessions Court, Calcutta is the Trial Court as no special court has been notified by the State Government for the jurisdiction of Calcutta as per Section 27 of the NIA Act.

Any accused being arrested by the State Police, having UA(P) Act be produced before the Court of Ld. CMM, Calcutta unless and until charge sheet is submitted and once the charge sheet is submitted, the Ld. CMM. Calcutta is duty bound to place the case record along with the accused person before this Court.

If an accused is arrested in other sections and during investigation if the Investigation Agency wants to add the sections of UA(P) Act, only permission is required from the Sessions Court and after obtaining

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permission, the CMM, Calcutta or the CJM of any district has the power to allow the Investigation Agency for adding sections of UA(P) Act.

If the Investigation Agency prays for extension of time for filing charge sheet beyond statutory period of 90 days, where UA(P) Act has either been added or initiated, permission is required from the Sessions Court.

In case of taking the accused in remand, the remand Court i.e. the Ld. Court of CMM, Calcutta or CJM of any district has enough jurisdiction to pass such order.

In the present case, Investigation Agency prays for adding sections 16/18/18B/20/38/39 of the UA(P) Act.

This Court finds that (here is sufficient ground for allowing the Investigation Agency to add the sections of the UA(P) Act in this particular Case.

Thus, the petition filed by the Investigation Agency dt. 05.04.2022 seeking permission for adding sections 16/18/18B/20/38/39 of the UA(P) Act is allowed.

Investigation agency is directed to take necessary steps before the Ld. Court of CMM, Calcutta for the same.

To 11.04.2022 for production of the accused before the Ld. CMM, Calcutta.

CD be returned.

Let a copy of this order be given to the IO of this Case.

Office is directed to send the case record to the Ld. CMM, Calcutta along with copy of order sheet after keeping the skeleton record.”

20. After considering the entirety of the material available on record, the learned Single Judge proceeded to hold as below:-

- (i) That the special Court constituted by the Central Government or the State Government, as the case may be, under the NIA Act has the exclusive jurisdiction to try offences under UAPA.

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- (ii) In view of Section 16 of the said Act, the special Court cannot take cognizance of the offence under the UAPA directly without the case being committed to it.
- (iii) In terms of the proviso to sub-Section(2) of Section 43(D) of the UAPA, the Court is empowered to extend the period of detention pending investigation. On a report of the Public Prosecutor indicating progress of investigation and specific reason for detention of the accused beyond 90 days but not more than 180 days.
- (iv) Sub-Section (3) of Section 22 of the NIA Act states that until a special Court is designated by the State Government under sub-Section (1), the jurisdiction conferred by the Act on a special Court notwithstanding anything contained in the Code, shall be exercised by the Court of Sessions in which the scheduled offence is committed and it shall have powers to follow the procedure provided under Chapter IV of the Act.
- (v) Reliance was also placed on the judgment of this Court in the case of Bikramjit Singh v. State of Punjab (2020) 10 SCC 616 wherein it has been held that for all offences under the UAPA, the special Court alone has the exclusive jurisdiction to try such offences.
21. After making the aforesaid discussion, the learned Single Judge proceeded to refer to the Division Bench judgment of the Calcutta High Court in CRM(DB) No. 3590 of 2022 dated 1st December, 2022 wherein it was held that once the offences under UAPA are added to a case, the Magistrate is denuded of the power to remand in terms of Section 167 CrPC (as amended in UAPA) beyond a period of 30 days. Observing so, the learned Single Judge proceeded to hold that the order dated 7th April, 2022 passed by the learned Chief Judge, City Sessions Court, Calcutta and all subsequent orders passed by the learned Chief Metropolitan Magistrate were illegal and inoperative and hence the same were quashed.
22. The frontal issue which falls for our consideration is as to whether the Chief Judge, City Sessions Court, Calcutta had the jurisdiction to pass the order dated 7th April, 2022.

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23. We would like to refer to sub-section (1) and sub-section (3) of Section 22 of the NIA Act which is germane to the controversy and is being reproduced hereinbelow:-

“22. Power of State Government to designate Court of Session as Special Courts-

- (1) The State Government may [designate one or more Courts of Session as] Special Courts for the trial of offences under any or all the enactments specified in the Schedule.
- (2)
- (3) The jurisdiction conferred by this Act on a Special Court shall, until a Special Court is [designated] by the State Government under sub-section (1) in the case of any offence punishable under this Act, notwithstanding anything contained in the Code, be exercised by the Court of Session of the division in which such offence has been committed and it shall have all the powers and follow the procedure provided under this Chapter.
- (4)”
24. A bare perusal of sub-section (3) of Section 22 of NIA Act would make it clear that until a Special Court is constituted by the State Government under sub-Section (1) of Section 22, in case of registration of any offence punishable under UAPA, the Court of Sessions of the division, in which the offence has been committed, would have the jurisdiction as conferred by the Act on a Special Court and *a fortiori*, it would have all the powers to follow the procedure provided under Chapter IV of the NIA Act.
25. Admittedly, the present case involves investigation by the State police, and therefore, the provisions of Section 22 would be applicable insofar as the issue of jurisdiction of the Court to try the offences is concerned.
26. Learned counsel for the respondent relied upon Gazette Notification dated 29th April, 2011 in order to canvass that the Special Court had already been constituted for trial of UAPA offences within the State of West Bengal.

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27. A bare perusal of the said notification would make it clear that the Special Court was constituted by the “Central Government” in exercise of the power conferred by sub-section (1) of Section 11 of the NIA Act.
28. The State Government has been given exclusive power delegated by virtue of Section 22(1) of the Act (reproduced *supra*) to constitute one or more Special Courts for trial of offences under any or all the enactments specified in the Schedule.
29. It is not in dispute that the State of West Bengal has so far not exercised the power conferred upon it by Section 22 of the NIA Act for constituting a Special Court for trial of offences set out in the Schedule to the NIA Act and hence, the Sessions Court within whose jurisdiction, the offence took place which would be the Chief Judge cum City Sessions Court in the case at hand, had the power and jurisdiction to deal with the case by virtue of the sub-section (3) of Section 22 of the NIA Act.
30. Hence, the order dated 7th April, 2022, whereby the learned Chief Judge cum City Sessions Court permitted the addition of the offences under UAPA to the case does not suffer from any illegality or infirmity.
31. Now, coming to the second argument advanced by learned counsel representing the parties.
32. Section 43D of UAPA provides a modified scheme for the application of Section 167 CrPC which reads as below:-

“43-D. Modified application of certain provisions of the Code.—(1) Notwithstanding anything contained in the Code or any other law, every offence punishable under this Act shall be deemed to be a cognizable offence within the meaning of clause (c) of Section 2 of the Code, and “cognizable case” as defined in that clause shall be construed accordingly.

(2) Section 167 of the Code shall apply in relation to a case involving an offence punishable under this Act subject to the modification that in sub-section (2),—

- (a) the references to “fifteen days”, “ninety days” and “sixty days”, wherever they occur, shall be construed as references to “thirty days”, “ninety days” and “ninety days” respectively; and

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- (b) after the proviso, the following provisos shall be *inserted*, namely:—

Provided further that if it is not possible to complete the investigation within the said period of ninety days, the Court may if it is satisfied with the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period of ninety days, extend the said period up to one hundred and eighty days:

Provided also that if the police officer making the investigation under this Act, requests, for the purposes of investigation, for police custody from judicial custody of any person in judicial custody, he shall file an affidavit stating the reasons for doing so and shall also explain the delay, if any, for requesting such police custody.”.

(3) Section 268 of the Code shall apply in relation to a case involving an offence punishable under this Act subject to the modification that—

- (a) the reference in sub-section (1) thereof—

- (i) to “the State Government” shall be construed as a reference to “the Central Government or the State Government”;
- (ii) to “order of the State Government” shall be construed as a reference to “order of the Central Government or the State Government, as the case may be”; and

- (b) the reference in sub-section (2) thereof, to “the State Government” shall be construed as a reference to “the Central Government or the State Government, as the case may be”.

(4) Nothing in Section 438 of the Code shall apply in relation to any case involving the arrest of any person accused of having committed an offence punishable under this Act.

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(5) Notwithstanding anything contained in the Code, no person accused of an offence punishable under Chapters IV and VI of this Act shall, if in custody, be released on bail or on his own bond unless the Public Prosecutor has been given an opportunity of being heard on the application for such release:

Provided that such accused person shall not be released on bail or on his own bond if the Court, on a perusal of the case diary or the report made under Section 173 of the Code is of the opinion that there are reasonable grounds for believing that the accusation against such person is *prima facie* true.

(6) The restrictions on granting of bail specified in sub-section (5) is in addition to the restrictions under the Code or any other law for the time being in force on granting of bail.

(7) Notwithstanding anything contained in sub-sections (5) and (6), no bail shall be granted to a person accused of an offence punishable under this Act, if he is not an Indian citizen and has entered the country unauthorisedly or illegally except in very exceptional circumstances and for reasons to be recorded in writing."

33. Under the proviso to Section 43D(2), the Court has been given the power to extend and authorise detention of the accused beyond a period of 90 days as provided under Section 167(2) CrPC.
34. Section 2(1)(d) of UAPA provides the definition of 'Court' under the Act and it reads as below:-

"2. Definitions.—(1) In this Act, unless the context otherwise requires,—

(d) "court" means a criminal court having jurisdiction, under the Code, to try offences under this Act [and includes a Special Court constituted under Section 11 or under [Section 22] of the National Investigation Agency Act, 2008.]

35. A plain reading of the provision would clearly indicate that the same admits to the jurisdiction of a normal criminal Court and also includes a Special Court constituted under Section 11 or Section 22 of the NIA Act.

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36. Hence, the Chief Judge cum City Sessions Court had the jurisdiction to pass the order dated 7th April, 2022. In view of the definition of the 'Court' provided under Section 2(1)(d) of UAPA, the jurisdictional Magistrate would also be clothed with the jurisdiction to deal with the remand of the accused albeit for a period of 90 days only because an express order of the Sessions Court or the Special Court, as the case may be, authorising remand beyond such period would be required by virtue of Section 43D(2) of UAPA(reproduced *supra*).
37. Hence, to the extent the learned Chief Metropolitan Magistrate extended the remand of the accused beyond the period of 90 days, the proceedings were grossly illegal. Nonetheless, the fact remains that the charge sheet came to be filed beyond the period of 90 days and as a matter of fact, even beyond a period of 180 days, but the accused never claimed default bail on the ground that the charge sheet had not been filed within the extended period as per Section 43D of the UAPA. Hence, the only academic question left for the Court to examine in such circumstances would be the effect of evidence collected, if any, during this period of so called illegal remand, after 90 days had lapsed from the date of initial remand of the accused and the right of the accused to seek any other legal remedy against such illegal remand. Such issues would have to be raised in appropriate proceedings, i.e. before the trial court at the proper stage.
38. As a consequence of the above discussion, the impugned judgment dated 11th May, 2023 passed by learned Single Judge of the Calcutta High Court cannot be sustained and is hereby reversed and set aside.
39. The appeal is allowed accordingly.
40. Pending application(s), if any, shall stand disposed of.

Headnotes prepared by: Ankit Gyan

Result of the case:
Appeal allowed.