IN THE HIGH COURT AT CALCUTTA

CRIMINAL REVISIONAL JURISDICTION

APPELLATE SIDE

CRR 137 of 2017

Samir Kumar Das @ Samir Das

Vs.

The State of West Bengal

Before: The Hon'ble Justice Apurba Sinha Ray

For the Petitioner	:	Mr. Debabrata Ray, Adv. Mr. Prabir Majumder, Adv. Mr. S. Majumder, Adv. Mr. Debasis Shil, Adv. Ms. Sangeeta Chakraborty, Adv.
For the State		Mr. Joydeep Ray, learned Jr. Govt. Adv., Mr. Samarjit Balial, Adv.
CAV On	:	27.03.2025
Judgment On	:	05.05.2025

Apurba Sinha Ray, J. :-

1. The judgment dated 06.04.2016 passed by the Learned Judicial Magistrate, 3rd Court, Krishnagar in connection with GR No. 1561 of 2008 which was affirmed by the First Appellate Court on 23.12.2016 is in the centre stage of challenge by the revisionist on the grounds, inter alia, that

the learned courts below including the First Appellate Court did not consider the materials on record and had unjustly convicted the present revisionist.

2. The learned counsel Mr. Ray has submitted that there are several lacuna in the judgment of conviction affirmed by the appellate court. The learned counsel has pointed out that at the top of the written complaint which was marked as exhibit - 4 it is written that the same was made for presentation by hand. Though the maker of it categorically deposed in court that the same was sent to the police station by registered posts, neither the envelop nor the accompaniments, as stated in the FIR, were exhibited before the Learned Trial Court for adjudication. Therefore, it cannot be treated as an FIR. The learned counsel has also submitted that the written complaint was dated 21.08.2008. After lodgment of the said complaint the same was dispatched to the Learned Chief Judicial Magistrate, Krishnagar, Nadia on 09.09.2008 i.e. after six days of the lodgment of the said complaint which gives rise to the presumption of embellishment. In this regard, the learned counsel has relied upon several judicial decisions such as **Balaka Singh & Ors. Vs. State of Punjab (1975 AIR 1962), Ishwar Singh Vs. The State of UP (AIR 1976 SC 2423).**

3. The learned counsel has drawn the attention of this court to the deposition of PW10, Bankim Chandra Saha who being the investigating officer of the case has stated in the examination-in-chief that “this is original

of the fake certificate standing in the name of Samir Das bearing dated 15.05.2001 and serial no. 4260 that I have collected from the C.R.P.F. (marked as exhibit - 12 with objection)". While in his cross-examination he has stated that "I have received the said fake certificate from Deputy Inspector of Police Group Center Durgapur through police constable Sukdeb Dey. Fact that I have not collected any other documents from the office of SDO Krishnagar".

4. The learned counsel has categorically submitted that the aforesaid PW10 has contradicted his own version with regard to obtaining the alleged fake certificate. However, neither the C.R.P.F. official nor constable Sukdeb Dey were examined by the prosecution to substantiate the claim of PW 10. According to Mr. Ray, it is clear that the investigation and the documents relied upon are afterthoughts and the conviction based on those evidence cannot sustain. So far as regards relevant law involved in the matter, Mr. Ray has submitted that in order to constitute an offence punishable under Section 471 of the Indian Penal Code, the prosecution is required to prove the ingredients of section 464 and section 470 of the Indian Penal Code. But in the instant case the prosecution made no allegation nor any attempt was made to prove the alleged document being exhibit - 12 being prepared and signed by the petitioner. Due to the failure on the part of the prosecution to prove the ingredients of section 464 of the Indian Penal Code, the petitioner cannot be convicted under section 471 of the Indian Penal Code. The learned counsel has relied upon the following judicial decisions of Hon'ble Supreme Court, **Mir Nagvi Askari Vs. CBI, 2009 (15) SCC 643,**

(Paragraphs – 164, 166), Sheila Sebastian Vs. R. Jawaharaj, 2018 (7) SCC 581 (Paragraphs – 18, 22, 25, 30), Deepak Gaba & Ors. Vs. State of Uttar Pradesh & Anr., (2023) 3 SCC 423 (Paragraphs – 21, 23, 24), Mohammed Ibrahim & Ors. Vs. State of Bihar (2009) 8 SCC 751 (Paragraphs –14, 16 and 17).

5. Learned counsel Mr. Ray has submitted that the Learned Trial Judge while convicting the petitioner did not deal with all the mandatory provisions of sections 360 and 361 of the Criminal Procedure Code read with section 4 of Probation of Offenders Act, which makes the order of conviction and sentence defective. He has placed his reliance on the judicial decisions reported in **Om Prakash & Ors. Vs. State of Haryana, (2001) 10 SCC 477, Tarak Nath Keshari Vs. State of West Bengal, 2023 SCC Online SC 605.**

6. The learned counsel for the revisionist has concluded his submission by contending that in view of the above circumstances since the prosecution has failed to prove its case against the petitioner beyond all reasonable doubts, the petitioner is entitled to an order of acquittal. The learned counsel has categorically submitted when the case is full of defectives, discrepancies, material irregularities and doubts the order of conviction and sentence should be set aside and the petitioner is to be acquitted from all charges levelled against him.

7. The learned counsel for the State has vehemently opposed the submission of the learned counsel of the convict. According to him, there are

sufficient materials against the petitioner showing that he was well aware that he does not belong to ST Category and inspite of having such knowledge, he submitted forged certificate and thereby he was able to get a job in the C.R.P.F. in a post of constable which was reserved for ST Category. As he is not actually an ST candidate, by his such act he deprived an eligible candidate from ST Category to secure the post of constable. The learned counsel has drawn the attention of this court to exhibit-8 which is a verification report stating that the certificate produced by the revisionist was fake and also exhibit-12 which is the original fake certificate.

8. The learned counsel for the State has categorically submitted that in this case offences under section 471 coupled with offences under section 417 and 420 IPC have been attracted, as the certificate submitted by the revisionist to secure the job of constable, which was a reserved category post, was proved to be a fake one. He has further submitted that in view of the relevant facts and circumstances the learned Trial Court had expunged the application of Section 468 of IPC in this case. According to him, there is no illegality or irregularity in convicting and sentencing the convict on the part of the learned trial court and further there is no material on record which suggests that the convict is entitled to acquittal.

9. The learned counsel for the State has also submitted that the revisionist should be directed to return his salaries and benefits which he obtained illegally from the concerned establishment with interest.

Court's View:-

10. I have considered the rival contentions of the parties. I have also taken into consideration the judicial decisions submitted by the learned counsel of the revisionist.

11. Needless to mention, each case has to be decided on its own merits. A single difference in factual matrix may produce legal consequences different from those which are reflected in the cited judicial decision. It is true that there are certain lacuna in the prosecution case as alleged by the learned counsel of the revisionist. The letter dated 21/08/2008 (Exhibit - 4) shows that initially the concerned authority requested the Officer-in-Charge of Krishnaganj Police Station, District - Nadia, West Bengal by sending Memo No. 2726/S dated 4-5/04/2007 to lodge an FIR against the revisionist on the ground that he was enlisted in C.R.P.F. as a constable (GD) on the basis of production of a fake caste certificate (ST Certificate bearing no. 5642/S dated 15.05.2001) on his behalf, but since then nothing was heard from the Officer-in-Charge of Krishnaganj Police Station, and as a result of which the concerned office of the C.R.P.F. Durgapur, West Bengal was unable to submit a report to their higher ups. This letter was sent to the concerned Officer-in-Charge of Krishnaganj Police Station on 21.08.2008 by hand and after receiving the said letter, the Officer-in-Charge initiated Krishnaganj Police Station Case No. 130 of 2008 dated 03.09.2008 under section 417, 420, 465, 468 and 471 IPC. From the above, it is found that by sending such letter, Mr. Sanjeev Ranjan, Deputy Commandant for Additional DIGP, GC, C.R.P.F., Durgapur - 14 enquired from the Officer-in-Charge,

Krishnaganj Police Station, Nadia, West Bengal to know whether on the basis of their earlier Memo dated 4-5/04/2007 any FIR was lodged against the present revisionist or not. It appears from the record that the said letter dated 21.08.2008 was treated as an FIR and thereafter formal FIR was drawn on the basis of such FIR. However, there was no document from the part of the prosecution that initially the Memo dated 4-5/04/2007 was actually sent to the concerned Officer-in-Charge Krishnaganj Police Station since the enclosure as mentioned in the letter dated 21.08.2008 were not found in the exhibit list. It is further true that during his examination-in-chief of PW6, Mr. Sanjeev Ranjan has deposed that he sent the letter dated 21.08.2008 by registered post but actually it is noted in the said letter that the same was delivered by hand.

12. It appears that the case was lodged in the year 2008 and PW6 Mr. Sanjeev Ranjan was examined in the year 2015. Therefore, if he has mistakenly stated that he sent the letter dated 21.08.2008 by registered post but actually the same was delivered by hand, such lacuna cannot be said to be a vital inconsistency since the memory of a human being sometimes fades due to passage of time. It is further true that after lodging of FIR on 03.09.2008 the FIR was placed before the concerned Chief Judicial Magistrate, Krishnagar, Nadia on 09.09.2008. In the judicial decision reported at **AIR 1976 SC 2423 (Ishwar Singh Vs. The State of UP)** the Hon'ble Supreme Court deprecated such practice.

13. However, the factual matrix in **Ishwar Singh (supra) case and Balaka Singh (Supra)** are different from the case in our hand. In both the above cases the accused were facing charges of murder. In our case, the documents play a vital role since it relates to the authenticity of a caste certificate and such a document is the prime issue herein. It is said that *men may lie but documents may not.* In this case the factual matrix relates to the fact that the revisionist not being an ST secured a job in Central Reserve Police Force in a post of constable which was reserved for an ST candidate, by producing a fake and fraudulent caste certificate.

14. It is not denied that the revisionist was a constable in C.R.P.F. It is also not denied by the revisionist that he does not belong to the scheduled tribe category. It is further not denied that the post in which he was appointed was reserved for ST Candidates. On the other hand the prosecution has produced one certificate after being informed by the concerned authority of C.R.P.F. that the revisionist produced a fake certificate to get the job as mentioned above. The prosecution has also brought on record a verification report from the concerned SDO office showing that no such caste certificate was ever issued from such office. If that be so, the prosecution has been able to discharge its primary onus and the onus shifts upon the revisionist since it is he who is the best person to say which caste he actually belongs to. As the particulars of a person's caste is within the domain of special knowledge of that person, he is under a duty to disclose which caste he belongs to. Throughout the entire proceeding it is

transpired that the petitioner did not discharge his onus by producing materials on record showing that he actually belongs to ST inspite of getting opportunity. Therefore, this case is different from the cases cited above, since the matter relates to a document involving a caste certificate which is found to be fake. There may be lacuna in the FIR but as the prosecution has been able to show that the caste certificate on the basis of which the revisionist was able to secure a job in a post reserved for ST category is a fake one, the entire onus shifts upon the revisionist. Section 106 of Indian Evidence Act, 1872 which is re-numbered as Section 109 of Bharatiya Sakshya Adhiniyam, 2023 read as follows:-

> "*106. Burden of proving fact especially within knowledge.- When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.*"

15. Therefore, from the above it is transpired that the petitioner was unable to discharge his onus regarding the proof of a fact which is within his exclusive knowledge by producing materials. I find that the judgments passed by the Learned Trial Court and also by the Learned First Appellate Court cannot be assailed on the ground, inter alia, that the case of the petitioner was not appropriately considered.

16. I have gone through the case of **Mir Nagvi Askari (supra)** wherein the Hon'ble Supreme Court in paragraphs 164 and 166 has been pleased to hold **:**

"164. A person is said to make a false document or record if he satisfies one of the three conditions as noticed hereinbefore and provided for under the said section. The first condition being that the document has been falsified with the intention of causing it to be believed that such document has been made by a person, by whom the person falsifying the document knows that it was not made. Clearly the documents in question in the present case, even if it be assumed to have been made dishonestly or fraudulently, had not been made with the intention of causing it to be believed that they were made by or under the authority of someone else. The second criterion of the section deals with a case where a person without lawful authority alters a document after it has been made. There has been no allegation of alteration of the voucher in question after they have been made. Therefore, in our opinion the second criterion of the said section is also not applicable to the present case. The third and final condition of Section 464 deals with a document, signed by a person who due to his mental capacity does not know the contents of the documents which were made i.e.

because of intoxication or unsoundness of mind, etc. Such is also not the case before us. Indisputably therefore the accused before us could not have been convicted with the making of a false document.

.....

166. Further, the offence of forgery deals with making of a false document with the specific intentions enumerated therein. The said section has been reproduced below.

"463. Forgery. Whoever makes any false documents or false electronic record or part of a document or electronic record, with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery."

However, since we have already held that the commission of the said offence has not been convincingly established, the accused could not have been convicted for the offence of forgery. The

definition of "false document" is a part of the definition of "forgery". Both must be read together. [Vimla (Dr.) v. Delhi Admn, AIR 1963 SC 1572]. Accordingly, the accused could not have been tried for offence under Section 467 which deals with forgery of valuable securities, will, etc. or Section 471 i.e. using as genuine a forged document or Section 477-A i.e. falsification of accounts. The conviction of the accused for the said offences is accordingly set aside."

17. By citing **Deepak Gaba & Ors. Vs. State of UP and Anr. reported in (2023) 3 SCC 423** it is contended by learned counsel Mr. Ray that in that case it has been laid down that unless offences under Section 417, 470, 464 are proved a conviction cannot be sustained under Section 471 of the Code. I differ with such submission. In paragraph 21 it was clearly laid down that section 471 IPC is applicable when a person fraudulently or dishonestly uses as genuine any document or electronic record which he knows or has reason to believe to be a fraudulent document or electronic record. In our case, the revisionist used the caste certificate knowing that he does not belong to an ST category and such certificate is not genuine. He has committed the offence punishable under Section 471 IPC. In my view, it is not a requirement of law that the accused or the convict has to himself prepare the forged document. If a person allows another to make a

fraudulent document and then the former uses the same as genuine, will the former not be punishable under law? Yes. He is punishable under law even if he did not make the fraudulent document by himself.

18. However, the factual aspects of the cited decisions are completely different from the present case.

19. I have also considered the case law of **Mohammed Ibrahim (supra)** the Hon'ble Supreme Court has laid down that

> *"16. .....When a person executes a document conveying a property describing it as his, there are two possibilities. The first is that he bona fide believes that the property actually belongs to him. The second is that he may be dishonestly or fraudulently claiming it to be his even though he knows that it is not his property. But to fall under the first category of "false documents", it is not sufficient that a document has been made or executed dishonestly or fraudulently."*

20. This case is also different from the case in our hand. However, the above case law also supports the case of the prosecution. In **Mohammed Ibrahim (supra)** (which has been relied upon in Mir Nagvi Aksari case), it has been held by the Hon'ble Supreme Court in paragraph 17 that <u>if what is</u>

executed is not a false document there is no forgery and if there is no forgery neither Section 467 nor Section 471 of the Code is attracted. But in our case it is different. The exhibit-12 was proved to be a fake document by producing the concerned SDO as a witness and further other materials were produced to show that the said certificate was not issued from the office of the concerned SDO. Therefore, the same is a false document.

21. It is also not correct exposition of law as submitted by the learned counsel of the revisionist that as Section 464 has not been proved by the prosecution, Section 471 of the IPC is not attracted.

22. If we peruse the provision of Section 471 we shall find that such submission is falsified by such section itself.

23. Section 471 provides as hereunder:-

> "**471. Using as genuine a forged document or electronic record.—**
>
> Whoever fraudulently or dishonestly uses as genuine any document or electronic record which he knows or has reason to believe to be a forged document or electronic record, shall be punished in the same manner as if he had forged such document or electronic record."

24. From the above section, it is found that if a person fraudulently or dishonestly uses a genuine document knowing that the same is a fraudulent document then he shall be punished in the same manner as if he has forged such a document. Therefore, even if the concerned person does not himself make such a fraudulent document he shall be deemed to have forged such a document if he intentionally uses the said document as genuine after knowing that the same is not. Therefore, the submission of the learned counsel Mr. Ray does not hold good.

25. In view of the above, I find that there is nothing wrong to convict the revisionist under section 471, 417 and 420 IPC. However, another limb of argument of Mr. Ray, is that the concerned Judicial Magistrate did not consider the provisions of Section 360 and 361 of Cr.P.C. before sentencing the convict. According to him, the revisionist is a first time offender and therefore the benefit of releasing him on probation should have been granted by the Learned Judicial Magistrate. No attempt was made on the part of the Learned Trial Court to specify why his release on probation is detrimental or is not feasible. The course of action taken by the Judicial Magistrate is not correct, as per submission of the learned counsel. In support of his contention he has submitted a catena of judicial decisions reported in **(2001) 10 SCC 477 (Om Prakash and Ors. Vs. State of Haryana), MANU/SC/1649/2017 (Prem Chand Vs. State of Himachal Pradesh), Criminal Appeal No. 13 of 2000 reported in MANU/SC/2587/2000 (Chandreshwar Sharma Vs. State of Bihar).**

26. In **Om Prakash and Ors. (supra)**, Hon'ble Supreme Court has been pleased to observe in paragraph 4:-

> "4. When the case came up for admission before this Court, the learned counsel for the appellants raised the contention that the provisions of Section 360 CrPC have not at all been looked into and we, therefore, issued limited notice as to why the said provisions will not be attracted to the facts and circumstances of the present case. The provisions of Section 360 CrPC are beneficial to the accused only when the accused is a first offender in case the accused is more than 21 years of age. Section 361 of the Code of Criminal Procedure indicates that if the Court decided not to exercise its jurisdiction under Section 360, then it must record its reasons as to why the benefit of Section 360 CrPC is being denied. In view of the peremptory nature of the language of provisions of Section 361, the Magistrate as well as the Court in appeal and revision not having indicated as to why the provisions of Section 360 CrPC have not been applied, there has been a gross miscarriage of justice and the legislative

> mandate engrafted in the aforesaid two sections of the Code have not been complied with."

27. In **Prem Chand Case (supra)** the Hon'ble Supreme Court has been pleased to direct the concerned court to deal with the appellant under the provisions of Section 360 of the Criminal Procedure Code, 1973. The relevant paragraph is reproduced herein below:-

> "2. Learned Counsel for the Appellant submits that the Appellant is a first-time offender. He does not have any criminal background and, therefore, he may be dealt with Under Section 360 of the Code of Criminal Procedure, 1973. It is evident from the materials placed on record that the Appellant is a first-time offender. He does not have any criminal antecedents of offenders. There is also no complaint with regard to his behavior during the pendency of the proceedings. Having regard to the facts and circumstance of the case, we are of the view that the High Court ought to have granted the benefit of probation to the Appellant. Therefore, the appeal is allowed in part and while upholding the conviction, the sentence of imprisonment awarded against him is set aside. The trial court is directed to deal with the

Appellant under the provisions of Section 360 of the Code of Criminal Procedure, 1973."

28. In **Chandeswar Sharma case (supra)** in paragraph 3 it has been discussed as hereunder:-

"3. The appellant herein was convicted under Sections 379 and 411 I.P.C. and was sentenced to rigorous imprisonment for one year as 3.5 Kg. of non-ferrous metal was recovered from his possession. On an appeal being filed, the conviction under Section 379 was affirmed. The appellant carried the matter in revision, but the revision also stood dismissed. All along the case of the appellant was that the recovery from the tiffin carrier kept on the cycle would not tantamount to recovery from the possession of the appellant, and this contention has been negatived and rightly so. When the matter was listed before this Court, a limited notice was issued as to why the provisions of Section 360 of the Criminal Procedure Code should not be made applicable. Pursuance to the said notice, Mr. Singh, the learned standing counsel for the State of Bihar has entered appearance. From the perusal of the judgment of

the learned Magistrate as well as the Court of Appeal, and that of the High Court, it transpires that none of the forums below had considered the question of applicability of Section 360 of the CrPC Section 361 and Section 360 of the Code on being read together would indicate that in any case where the Court could have dealt with an accused under Section 360 of the Code, and yet does not want to grant the benefit of the said provision then it shall record in its judgment the specific reasons for not having done so. This has apparently not been done, inasmuch as the Court overlooked the provisions of Sections 360 and 361 of the CrPC. As such, the mandatory duty cast on the Magistrate has not been performed. Looking to the facts and circumstances of the present case, we see no reasons not to apply the provisions of Section 360 of the CrPC. We accordingly, while maintain the conviction of the appellant, direct that he will be dealt with under section 360, and as such, we direct that the appellant be released on probation of good conduct instead of sentencing him, and he should enter into a bond with one surety to appear and receive the sentence when called upon during

the period of one year for the purpose in question. The bond for a year shall be executed before the learned Chief Judicial Magistrate, Ranchi, within 3 weeks from today. The appeal is disposed of accordingly."

29. From the above, it is crystal clear that the learned Trial Court is under a duty to consider the provision of sections 360 and 361 of the Code before sentencing the convict. If the same is not done the process of sentencing cannot be said to be a good exercise of power vested upon the concerned Judicial Magistrate. Let us see what is written by the Learned Judicial Magistrate at the time of sentencing the present revisionist. It appears from the impugned judgment that Learned Trial Court has observed in paragraph 19 of the impugned judgment as follows:-

"Considering the nature and circumstances of the offences the benefit of Probation of Offenders Act, 1958 is not extended to the convict Samir Das."

30. Therefore, the Learned Judicial Magistrate has only considered the nature and circumstances of the offence and according to him the revisionist is not entitled to the benefit of Probation of Offenders Act, 1958. There is no whisper in the said judgment that the Learned Judicial Magistrate has taken into consideration the provisions of Section 360 and 361 of the Code of Criminal Procedure, 1973**.** Section 360(1) of the Code of Criminal Procedure provides as hereunder:-

"360. Order to release on probation of good conduct or after admonition.

(1)When any person not under twenty-one years of age is convicted of an offence punishable with fine only or with imprisonment for a term of seven years or less, or when any person under twenty-one years of age or any woman is convicted of an offence not punishable with death or imprisonment for life, and no previous conviction is proved against the offender, if it appears to the Court before which he is convicted, regard being had to the age, character or antecedents of the offender, and to the circumstances in which the offence was committed, that it is expedient that the offender should be released on probation of good conduct, the Court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period (not exceeding three years) as the Court may direct and in the meantime to keep the peace and be of good behavior……"

31. Section 361 of the Code has made it mandatory that if the concerned court could have dealt with the accused under section 360 or the Probation of Offenders Act, 1958 but does not do so it has to record in its judgment the special reasons for not having done so. For the sake of convenience the provisions of Section 361 is quoted hereunder:-

> *"**361. Special reasons to be recorded in certain cases**- Where in any case the Court could have dealt with -*
>
> *a) an accused person under section 360 or under the provisions of the Probation of Offenders Act, 1958 (20 of 1958), or*
>
> *(b) a youthful offender under the Children Act, 1960 (60 of 1960), or any other law for the time being in force for the treatment, training or rehabilitation of youthful offenders, but has not done so, it shall record in its judgment the special reasons for not having done so."*

32. In the judgment the Learned Trial Judge held, inter alia, as the revisionist dishonestly secured an employment for him by using fake caste certificate and thereby deprived an eligible Candidate from ST Category, it would be misplaced sympathy if the petitioner/convict is not appropriately sentenced. However, it appears that the provisions of section 360 and 361 of

the Code are not taken into consideration by the Learned Trial Court. He even did not give any special reason in his judgment for not applying the provisions of 360 of the Code in this case. He had the discretion not to release the convict on probation but he was under an obligation to specify the special reason for not using such discretion in his favour. In other words, application of Section 360 of the Code along with Section 361 is not an empty formality. The Learned Judicial Magistrate is duty bound to apply his mind by taking into consideration the factors mentioned in Section 360 Cr.P.C. and to weigh the circumstances in its proper perspective before sentencing a convict. The process of sentencing remains incomplete if the Judicial Magistrate does not comply with the requirements as mentioned in Sections 360 and 361 of Code of Criminal Procedure, 1973.

33. However, I would like to add one more thing. In this regard, Hon'ble ***Justice V.R. Krishna Iyear*** in his judgment in **Ved Prakash Vs. State of Haryana (1981) 1 SCC 447** has clearly laid down the guidelines. Hon'ble Justice Iyear in his inimitable style observed in the above case law *"we must emphasis that sentencing an accused person is a sensitive exercise of discretion and not a routine or mechanical prescription acting on hunch. The Trial Court should have collected materials necessary to help award a just punishment in the circumstances. The social background and the personal factors of the crime-doer are very relevant although in practice Criminal Courts have hardly paid attention to the social milieu or the personal circumstances of the offender. Even if Section 360, Cr.P.C is not attracted, it is the duty of the*

sentencing Court to be activist enough to collect such facts as have a bearing on punishment with a rehabilitating slant."

34. From the impugned judgment, it appears that the Learned Trial Court did not consider the family background, social status, the number of children, financial condition etc. of the convict. The sentencing process of the Learned Judicial Magistrate did not show that he had taken all these considerations before sentencing the petitioner. No efforts were taken from the side of the Learned Judicial Magistrate to record whether the convict is a first time offender or not. The Learned Judicial Magistrate only considered the nature and circumstances of the offence which are not the requirement of Section 360 of the Code. In my view the Learned Judicial Magistrate has to consider all aspects of the matter including the social factors which might have mitigating effects in sentencing the convict. Therefore, I find that the sentencing process adopted by the Learned Judicial Magistrate is not in accordance with the desire of the Hon'ble Supreme Court as laid down in the above case laws. Astonishingly, the Learned First Appellate Court also did not consider the issues as stated above.

35. I must say at the cost of repetition that the judicial decision which laid down the guiding principle in Ved Prakash vs the State of Haryana (supra) still holds good. The Court must take into consideration the status, the position of members of family and other social factors or background of the convict before sentencing him.

36. The learned Trial Court has to record that he considers all the above factors before passing the sentence. I am not saying that after considering such factors, as stated above, the Court cannot refuse to release the offender on Probation of Offenders Act. What I want to say is that the judgment must show that the learned court has considered the relevant factors and has held that there are certain reasons for which the court is not unwilling to release the convict on probation under the provisions of under Section 4 of the Probation of Offenders Act or Section 360 of the Code, as the case may be.

37. In view of the above, though the conviction of the petitioner is hereby upheld but the sentence upon the convict being found unsatisfactorily imposed upon him is hereby set aside.

38. Accordingly, the present criminal revisional application is allowed in part on contest. The conviction order of the petitioner namely Samir Das in connection with GR No. 1561 of 2008 of the Learned Judicial Magistrate, 3rd Court, Krishnagar, Nadia affirmed in Criminal Appeal No. 11 of 2016 of Learned Additional Sessions Judge, 5th Court, Krishnagar, Nadia on 23.12.2016 is hereby affirmed, but the order of sentence is set aside. The Learned Judicial Magistrate, 3rd Court, Krishnagar, Nadia is to hear the convict afresh on the point of sentence and also on the provisions of Section 360 of the Code of Criminal Procedure, 1973 which is now as Section 401

BNSS and to pass an order of sentence upon the convict in consideration of the discussion mentioned in paragraph nos. 25 to 37 within three months from date and the convict is directed to appear before the Learned Trial Court as and when he was called upon. Let a copy of judgment along with the trial court record be sent to the Learned Judicial Magistrate, 3rd Court, Krishnagar through the Learned Chief Judicial Magistrate Nadia at Krishnagar. On receipt of the trial court record the Learned Judicial Magistrate, 3rd Court Krishnagar, Nadia shall issue a notice upon the convict for hearing on the point of sentence at an early date.

39. The revisional application being CRR 137 of 2017 is allowed in part on contest. No order as to costs. The trial court record be returned to the concerned court at once.

40. Accordingly, CRR 137 of 2017 is disposed of.

41. Urgent photostat certified copies of this Judgment, if applied for, be supplied to the parties on compliance of all necessary formalities.

(APURBA SINHA RAY, J.)