

Serial No.	Date	Notes and Orders
<p>20.7.2017 Sl. No.27 Ct. No. 28 as &amp; PA to J. Bagchi, J.</p>		<p style="text-align: center;"><b><u>C.R.A. 64 OF 2014</u></b></p> <p><b>BAIDYANATH MARDI</b> . . . APPELLANT</p> <p style="text-align: center;"><b>VERSUS</b></p> <p><b>STATE OF WEST BENGAL</b> . . . RESPONDENT</p> <p>Mr. Deep Chaim Kabir . . . For The Appellant</p> <p>Ms. Anasuya Sinha . . . For The State</p> <p>The appeal petition had been forwarded from the Correctional Home in 2014 on behalf of the appellant (in custody) challenging the judgment and order of conviction and sentence passed by the trial Court on 27.11.2013. On 10.4.2014, the matter appeared in the list when the learned Single Judge was informed that Mr. R.K. Ghosal, learned advocate has been appointed on behalf of the High Court Legal Services Committee to take steps in the matter. In spite of repeated adjournments, no steps were taken and the matter went out of list.</p> <p>Thereafter, the matter has again been placed in my list in 2017 whereupon I requested Mr. Kabir, an empanelled lawyer of the State Legal Services Authority to take steps in the matter.</p> <p>I have perused the records of the case. It appears that the petition of appeal was presented before this Court within the period of limitation and, therefore, I admit the said appeal.</p> <p>Call for the records.</p> <p>Realisation of fine is stayed and liberty is given to the appellant</p>

*Handwritten notes:*  
 Secy, SLSA / A.R.VB /  
 S.O. Correspondence Section  
 to act in terms of the H.C.  
 Court's order dt 20/7/17.

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		<p>to pray for bail upon notice to the State.</p> <p>Report be also submitted from the State as to the period of sentence, already undergone by the appellant in the meantime. Such report is to be filed on the next date of hearing.</p> <p>The aforesaid state of affairs persuade me to note with concern the dismal failure in the matter of extending effective legal aid/assistance to convicts in prosecution of appeals from judgment and orders of conviction and sentence.</p> <p>The factual matrix of this case shows that although the appeal papers have been forwarded from the Correctional Home, no steps had been taken in the matter for the last three years to prosecute the appeal on behalf of the appellant.</p> <p>Right to prefer an appeal is not only a statutory right but a basic human right of every convict in terms of Article 14(5) of International Covenant of Civil and Political Rights to which the country is a signatory. Right to free legal aid/assistance to an accused is a fundamental right implicit in the requirement of fair, just and reasonable procedure enshrined under Article 21, read with Article 39A of the Constitution of India. Such right is also statutorily expressed in section 304 Cr.P.C. and the provisions of the Legal Services Authorities Act, 1987 (hereinafter referred to as Act of 1987). The latter legislation provides for appropriate statutory mechanisms to extend prompt and effective legal aid to any person in custody as enumerated in section 12 of the said Act of 1987 which would include a convict. It is no longer <i>res integra</i> that the Magistrate/Judge has a duty to inform an accused of his right to be</p>



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		<p>defended by a lawyer appointed at the expense of the State from the stage of his first production before the Court. Failure to do so, would tantamount to dereliction of duty on the part of the judicial officer exposing him to departmental proceeding and would even vitiate the trial if such breach occurred in the course of trial [See <i>Md. Ajmal Md. Amir Kasab @ Abu Mujahid vs. State of Maharashtra, (2012) 9 SCC 1 (para-474, 477 and 478)</i>]. Hence, duty to inform an accused of his right to free legal aid while facing a criminal charge is a species of 'fair trial rights' acknowledged as an integral component of just, fair and reasonable procedure enshrined under Article 21 of the Constitution of India.</p> <p>In <i>Rajoo @ Ramakant vs. State of Madhya Pradesh, (2012) 8 SCC 553</i> the Apex Court held that the fundamental right to legal aid to an accused is not confined to the trial stage alone but would also extend to the appellate stage. The Court observed as follows:-</p> <p style="text-align: center;"><i>"11. It is important to note in this context that Sections 12 and 13 of the Act do not make any distinction between the trial stage and the appellate stage for providing legal services. In other words, a eligible person is entitled to legal services at any stage of the proceedings which he or she is prosecuting or defending."</i></p> <p>It further held that appellate Court had a corresponding duty to inform the accused of such right to avail legal aid to prosecute the appeal. It remarked as follows:-</p> <p style="text-align: center;"><i>"23. Under the circumstances, we are of the opinion that neither the Constitution nor the Legal Services Authorities Act make any distinction between a trial and a appeal for the purposes of providing free legal aid to an accused or a person in custody."</i></p>

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		<p>In the light of the expanding horizons of access to legal aid to accused persons it is in the fitness of things that the trial Judge while pronouncing an order of conviction and sentence should be saddled with a corresponding duty to inform the convict of his right to avail legal aid to prefer an appeal against the conviction if he is unable to do so with his own resources. Such duty of the trial Court is mandated to ensure that the accused is made aware that his right to legal aid is not co-terminus with his conviction but continues even at the appellate stage.</p> <p>Under such circumstances, I am of the opinion that a procedure is required to be laid down so that legal aid/assistance to every convict to prefer appeal against judgment and order of conviction and sentence is promptly intimated to him at the time of delivery of the judgment itself so that the fundamental right to legal aid/assistance may be effectively availed of as a vibrant reality and does not become a distant mirage in the inert letters of legal classics.</p> <p>Accordingly, I direct as follows:-</p> <p>a) Every Judge while pronouncing a judgment of conviction and sentence shall inform the convict in a language which is understandable to him, his right to prefer appeal against such judgment including his right to avail of legal aid in that regard from the appropriate legal services authority under the Act of 1987. In the event, the appellant expresses his desire to prefer appeal with legal aid, the Judge shall send a free copy of the judgment to the Secretary of the concerned legal services authority attached to the appellate Court for</p>

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		<p>necessary steps in the matter.</p> <p>b) The aforesaid fact shall be endorsed at the foot of every judgment stating clearly that the right to prefer appeal with legal aid has been duly communicated to the understanding of the convict. Response thereto of the convict shall also be indicated in the body of the judgment.</p> <p>c) Necessary amendments may be made to Chapter X of the Calcutta High Court Criminal (Subordinate Courts) Rules, 1985 so that such duty is imposed on the trial Judge at the time of delivery of judgment.</p> <p>d) In addition thereto, Superintendent of the Correctional Home where the convict is received upon conviction shall also communicate to him such right and record his willingness, if any, to prefer appeal with legal aid in the records of the Correctional Home. In the event, the convict desires to prefer appeal with legal aid, the Superintendent of the concerned Correctional Home shall forth remit necessary papers not only to the registry of the appellate Court but also to the Secretary of the concerned legal services authority attached to the said Court for necessary steps in the matter.</p> <p>e) Secretary of the concerned legal services authority attached to the appellate Court on receipt of the papers from the trial Judge or the Correctional Home authorities, as the case may be, shall immediately but not later than seven days appoint a lawyer from its panel, who has sufficient knowledge and expertise to deal with such cases, to prefer and prosecute the</p>

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		<p>appeal on behalf of the appellant.</p> <p>f) The lawyer so appointed shall, if necessary, interview the convict in the correctional home, file necessary pleadings in Court and prosecute the appeal in accordance with law. He shall submit quarterly reports to the Secretary of the concerned legal services authority as to steps taken by him and the status of the appeal till its disposal.</p> <p>g) Registrar General of the High Court is directed to circulate a copy of this order to every judicial officer in the State of West Bengal to ensure that the aforesaid directions are duly complied with. He shall also initiate the procedure for amendment of the Criminal Rules and Orders, as proposed in the direction no.(c), by the High Court in accordance with law.</p> <p>h) Secretary, State Legal Services Authority shall circulate a copy of this order to all the Secretaries of the District and Sub-divisional Legal Services Authorities and give wide publicity to these directions amongst the general public for prompt and effective implementation of such directions.</p> <p>i) Department is directed to communicate this order to the Director General of Correctional Services, West Bengal, who shall communicate this order to the Superintendents of all the Correctional Homes in the State of West Bengal for prompt and effective implementation of the directions.</p> <p>Registrar General of this Court, Secretary, State Legal Services Authority and Director General of Correctional Services, West</p>

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		<p>Bengal, shall submit reports of compliance before this Court on the next date of hearing.</p> <p>Let the matter appear under the same heading fortnight hence.</p> <p>Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.</p> <p style="text-align: right;">(JOYMALYA BAGCHI, J.)</p>

✓ RE/ANC/RG/LC  
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