

**HIGH COURT OF TRIPURA  
AGARTALA**

**Crl. Rev. P. No.46 of 2023**

Md. Manir Ali and others

..... Petitioner(s)

**V E R S U S**

The State of Tripura

..... Respondent(s)

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For Petitioner(s) : Mr. A. Nandi, Advocate.

For Respondent(s) : Mr. Ratan Datta, Public Prosecutor.

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**HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH**  
**\_O\_R\_D\_E\_R\_**

**29/08/2023**

Heard Mr. A. Nandi, learned counsel appearing for the petitioners.

Also heard Mr. Ratan Datta, learned Public Prosecutor appearing for the State.

Petitioners are aggrieved by the judgment in appeal dated 25.07.2023 passed in case No. Criminal Appeal No.02 of 2022 by the Court of the Sessions Judge, North Tripura, Dharmanagar whereby the learned Appellate Court has affirmed the judgment of conviction and sentence passed by the learned trial Court under Section 341 of the IPC. However, so far as the sentence of imprisonment and fine under Section 325 of the IPC is concerned, it has been modified to rigorous imprisonment for two months along with fine of Rs.2,000/- (Rupees two thousand) each under Section 323 of the IPC and in default thereof to suffer imprisonment for one month.

Learned counsel for the revision petitioners has assailed the impugned judgment both on grounds of irregularity and misappreciation of

evidence on record. It is submitted that the learned trial Court had convicted all the accused persons for the offence punishable under Section 341 of the IPC but convicted only the petitioner No.1, Md. Manir Ali for the offence under Section 325 of the IPC. It has sentenced all the convicts to pay fine of Rs.300/- (Rupees three hundred) each with a default sentence under Section 341 of the IPC whereas the accused/petitioner No.1 herein, was sentenced to undergo imprisonment under Section 325 of the IPC with rigorous imprisonment of two months along with fine of Rs.2,000/- (Rupees two thousand) and a default sentence. The learned Appellate Court has, in the operative part of the order at paragraph 47 and 48 however, while affirming the conviction of all the accused under Section 341 of the IPC modified the sentence of imprisonment under Section 325 of the IPC to rigorous imprisonment for two months with a fine of Rs.2,000/- (Rupees two thousand) each under Section 323 of the IPC with a default sentence against each of the accused persons though they were not convicted under Section 325 of the IPC.

Learned counsel for the petitioners has drawn the attention of this Court to Section 386(b)(iii) of the Cr.P.C. and submits that the Appellate Court cannot enhance the sentence when there is no conviction by the original Court and there is no appeal by the State against the judgment of conviction. Apart from that, learned counsel for the petitioners has sought to draw attention of the Court to the materials on record relating to filing of the FIR i.e. almost after 17 (seventeen) days of the alleged incidence on 22.07.2016 at 8.30/9.00 am and also evidence of independent witness such as PW-6 whose testimony does not inspire that he was present at the place of occurrence. It is submitted that the

learned trial Court and the Appellate Court both have accepted that there was a long standing dispute between the parties and they are close relatives also. The incidence is stated to have occurred while ploughing the field when the accused party is alleged to have assaulted the informant party. Though allegations of assault leading to grievous injury have been alleged but the doctor, PW-10 has not found any external injury nor found it to be grievous in nature. However, the learned trial Court has erroneously proceeded to convict the petitioners under Section 341 of the IPC and petitioner No.1 under Section 325 of the IPC though there is no case of grievous hurt. Therefore, the impugned judgment suffers from material irregularity and perversity in the findings which needs interference by this Court in revisional jurisdiction.

Learned Public Prosecutor has strongly opposed the prayer. However, he concedes to the first submission that the modification of the conviction and sentence under Section 325 of the IPC against petitioner No.1, Md. Manir Ali has been converted to Section 323 of the IPC with rigorous imprisonment for two months and a fine of Rs.2,000/- (Rupees two thousand) and default sentence each, that means against all the accused persons which is an error in the impugned judgment. Learned Public Prosecutor for the State however, has submitted that there is no illegality or perversity in the findings of the learned trial Court as the incidence is not in dispute and moreover prosecution witnesses such as PW-1 to 5 who are the informant and his family members, PW-6, an independent witness, PW-7, wife of informant, all have deposed in favour of the prosecution story. The findings of the learned trial

Court as affirmed in appeal, therefore, do not suffer from any infirmity which calls for interference in revisional jurisdiction.

I have considered the submissions of learned counsel for the parties and taken note of the materials placed from the impugned judgment.

On perusal of the judgment of the learned trial Court and the Appellate Court it appears that the learned Appellate Court has converted the sentence under Section 325 of the IPC upon petitioner No.1, Md. Manir Ali to Section 323 of the IPC but imposed a punishment of rigorous imprisonment for two months with a fine of Rs.2,000/- (Rupees two thousand) against each of the convicts though they were not convicted under Section 325 of the IPC by the learned trial Court. Such a course was not permissible as the State had not gone in appeal. As such, in the operative portion of the impugned judgment dated 25.07.2023, i.e. paragraph 48 passed by the learned Appellate Court in case No. Criminal Appeal No.02 of 2022, should be read as confined to the accused/petitioner No.1, Md. Manir Ali and not in respect of the other accused persons.

However, upon going through the materials placed from record, the findings rendered by the learned trial Court and also by the Appellate Court, this Court is of the considered view that there are no perversity in the findings of the learned Courts below so far as the conviction of the accused persons are concerned which require interference in revisional jurisdiction. The long standing dispute between the parties is admitted. The prosecution

witnesses i.e. PW-1 to 5 and 7 who are the informant and his family members and PW-6 have supported the allegations made in the FIR in substance.

Considering the nature of the evidence and the sentence imposed under Section 341 of the IPC and Section 325 of the IPC on the respective accused persons, this Court does not find any ground to interfere in the findings of the learned Appellate Court. As such, the instant revision petition is disposed of with the aforesaid modification in the sentence part of accused/petitioner No.1, Md. Manir Ali.

Pending application(s), if any, also stands disposed of.

**(APARESH KUMAR SINGH), CJ**

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