

**HIGH COURT OF TRIPURA
AGARTALA**

Criminal Revision Petition No.48 of 2022

1. Sri Ajit Debnath, Age-50 years, son of Sri Harimadhab Debnath,
2. Sri Khokan Paul, Age-53 years, son of late Tarini Mohan Paul,
3. Sri Rupchand Paul, Age-54 years, son of late Satish Paul,

All are inhabitant of Barabhaiya (Bagma), under R.K Pur PS, Uaipur, Gomati District Tripura

..... Petitioner(s)

V E R S U S

The State of Tripura

.....Respondent(s)

For Petitioner(s) : Mr. H.K. Bhowmik, Advocate.

For Respondent(s) : Mr. S. Debnath, Addl. PP.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Date of hearing and judgment : 25th April, 2023.

Whether fit for reporting : NO.

JUDGMENT & ORDER(ORAL)

Heard Mr. H.K. Bhowmik, learned counsel for the petitioners and Mr. S. Debnath, learned Additional Public Prosecutor for the State-respondent.

[2] The instant revision petition is directed against the judgment dated 04.08.2022 passed in Criminal Appeal No.08 of 2021 by the learned Additional Sessions Judge, Gomati Judicial District, Udaipur whereby the judgment of conviction and sentences passed by the learned trial Court in c/w PRC(WP) No.44 of 2019 under Sections 448/323/341 of IPC has been

upheld and confirmed but the sentences under Sections 426/323 (sentenced at serial No.5 in paragraph 14 of the judgment of the trial Court) of IPC have been set aside. Learned counsel for the petitioners submits that out of the 4(four) main original accused one has died during trial.

[3] The prosecution story as per the informant is based on the FIR dated 26.03.2018 wherein it was alleged that the accused persons illegally entered into the house premises of the informant and asked her to open the door of her dwelling hut. She and her mother-in-law were present in their house though her husband was not present. Since she did not open the door of her dwelling hut, the accused persons kicked and gave blows in the door with lathi and thereby entered her room by breaking down the door of the hut and then asked whereabouts of her husband. They abused her in slang language and pushed her to the ground and also her mother-in-law. They ransacked and damaged household goods. The accused persons also hit her on the head and back by an iron rod causing bleeding injuries. Subhas Dey (PW.1) also sustained cut injuries on the finger of right hand. When her husband came, the aforesaid accused persons again restrained him and started assaulting him with fist and blows. The accused persons also took away Rs.700/- from the pocket of his shirt. On appearance of people from nearby locality, these accused persons fled away. It was asserted that these accused persons are supporters of CPI(M) and she herself and her family members are supporters of BJP and out of political rivalry, they had

committed the incidents. Based on the FIR, investigation was undertaken and charge-sheet was filed against these accused persons bearing RK Pur PS No.19 of 2019 dated 22.02.2019 under Sections 341/448/427/325//506/34 of IPC.

[4] The learned Judicial Magistrate 1st Class, Court No.3, Udaipur, Gomati Tripura after conclusion of evidence of the prosecution and recording of the statement of the accused under Section 313 of Cr.P.C., recorded conviction against the accused persons in the following manner :

“(i) To suffer SI of one month and pay fine of Rs.1000/- only ID payment of fine, all the convicts shall additionally suffer simple imprisonment of 25 days;

(ii) Under Section 323 IPC to suffer simple imprisonment of one month and pay fine of Rs.1000/- only and ID and payment of fine, all the convicts shall additionally suffer SI for 25 days for commission of offence for voluntarily causing hurt to PW-1, Subhash Dey;

(iii) Under Section 426 IPC to suffer simple imprisonment of 1 month and pay fine of Rs.3000/- and ID for payment of fine, all the convicts shall additionally suffer SI for two months;

(iv) Under Section 341 IPC to suffer simple imprisonment of 1 month and pay fine of Rs.500/- only and ID for payment of fine, all the convicts shall, additionally suffer SI for 25 days;

(v) Under Section 323 IPC to suffer simple imprisonment of one month and pay fine of Rs.1000/- only and ID and payment of fine, all the convicts shall additionally suffer SI for 25 days for commission of offence for voluntarily causing hurt to PW-5, Asit Chakraborty.”

[5] In appeal the learned Appellate Court has set aside the sentence under Sections 426/323 of IPC whereas confirmed the conviction and sentence under Sections 448/323/341 of IPC.

[6] Learned counsel for the petitioners submits that the offences are punishable by imprisonment up to one year or with fine which may extend to one thousand rupees or with both under Section 323 of IPC; (b) for a sentence of simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees or with both under Section 341 of IPC and (c) for an imprisonment with either description for a term which may extend to one year, or with fine which may extend to one thousand rupees or with both under Section 448 of IPC. All these offences are compoundable in nature. Petitioners are first time offenders. They have not undergone any custody as the offences are bailable in nature. As such, at this stage, when the entire prosecution case if read in entirety would show political rivalry and counter case also, the petitioners deserve leniency. As such, the petitioners may either be released on probation or be released with fine amount. Petitioners are poor cultivators and have meager source of income. Learned counsel for the petitioners has relied upon a decision of this Court in case of *Akbar Khan and others versus State of Tripura reported in (2015) 1 TLR 585*, paragraphs 18 and 19 of which are reproduced hereunder :

“18. Every offence is an offence against the State. It is the general principle of criminal law that an offender shall be punished for commission of an offence as prescribed by law. There cannot be any deviation from this general principle. An offender should suffer punishment for the sake of the society as otherwise there shall be lawlessness in the society as a whole. The punishment must be according to law. Section 360 of Cr.PC and the provisions of the Probation of Offenders Act has been made with an ultimate object of reformation of the offenders specially, the youthful offenders. The criminal courts, therefore, should not be oblivious to those

provisions while inflicting punishment in a given case. In appropriate cases specially in cases of minor offence, the criminal courts must apply the benevolent provisions of section 360 of Cr.P.C or that of section 4 of the Probation of Offenders Act.

19. While the accused persons were found guilty of committing minor offence under section 323 read with section 34 of IPC, the courts below would give benefit of section 360 of Cr.P.C or section 4 of the Probation of Offenders Act to the convict-petitioners. Section 361 clearly stipulates that special reasons has to be recorded by the court in case benefit of section 360 of Cr.P.C or the benefit of Probation of Offenders Act is refused to an accused in a given case.”

Mr. S. Debnath, learned Additional Public Prosecutor for the State has opposed the prayer of the petitioners.

[7] I have considered the submissions of learned counsel for the parties. After going through the impugned judgment including the judgment of the trial Court and the relevant lower court records, I am not inclined to interfere with the findings of the courts below as far as the judgment of conviction is concerned but considering the fact that the petitioners are first time offenders and apparently around the age of 50 years and the offence relates to the year 2018 and moreover as per the FIR itself it is apparent that it is a case of political rivalry between supporters of two political parties, no fruitful purpose would be served by sending the petitioner-convicts back to prison. Rather, interest of justice would be sufficed if the sentence is modified to payment of fine. As such, the sentence as affirmed by the learned Appellate Court is modified to the extent that the petitioners shall have to pay fine of Rs.5,000/- each within a period of 12 weeks from today

failing which the petitioners shall have to serve rest of the sentence as ordered by the learned court below.

[8] With the aforesaid observations, directions and modification in the sentence, the instant criminal revision petition stands disposed of. The petitioners shall be discharged from the liability of bail bonds subject to fulfillment of the aforesaid condition. Let the lower court records be sent to the court concerned.

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

(APARESH KUMAR SINGH), CJ



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