

Serial No. 01
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl. Rev. P. No. 2 of 2022

Date of Decision: 05.06.2023

Shri. Donbok Buam & 2 Ors. Vs. State of Meghalaya & Anr.

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Ms. C.B. Sawian, Adv.

For the Respondent(s) : Mr. R. Gurung, GA with
Ms. S. Shyam, GA

- | | | |
|-----|---|--------|
| i) | Whether approved for reporting in
Law journals etc.: | Yes/No |
| ii) | Whether approved for publication
in press: | Yes/No |

JUDGMENT

1. On 31.01.2018 one Smti. Baiamonlang Tariang of Ladjuplem Village in the West Jaintia Hills District had lodged an FIR before the Officer-in-Charge, Amlarem P.S. with a complaint that the petitioners herein, that is, Donbok Buam, Maya Buam and Chem Buam have assaulted her on 29.01.2018 at about 10:30 am at Ladjuplem village. It is

further stated that on 31.01.2018 the said petitioners have demolished the footpath to the house of the said complainant by the use of an Earthmover (JCB).

2. Accordingly, on receipt of the said FIR, a police case was registered as Amlarem P.S. Case No. 3(1) of 2018 under Section 427/323/506/34 IPC. On investigation being completed, the Investigating Officer of the case had filed the final report/chargesheet before the court under Section 173 Cr.P.C opining that upon investigation, a prima facie case under Section 427/506/34 IPC is found well established against the accused persons/petitioners.

3. Thereafter, the learned Judicial Magistrate First Class had taken cognizance of the offence and registered the case as GR Case No. 6/2018. The learned Magistrate proceeded with the trial and after recording of evidence of relevant witnesses and on consideration of the materials on record, had, vide order dated 16.11.2020 disposed of the case by coming to a finding that the accused/petitioners herein are guilty of the offence under Section 427/506/34 IPC and was sentenced to payment of fine of ₹ 2000/- (Rupees Two Thousand) only, in default of such payment to be liable for imprisonment of seven days.

4. From the petition, at para 10 of the same, it has been stated that on the day the judgment was passed by the learned Magistrate, the accused persons/petitioners have filed an application before the said court under Section 389(3) Cr.P.C with a prayer to suspend the affect of such judgment and sentence dated 16.11.2020 to allow the petitioners to prefer an appeal before the appellate court. However, the learned Magistrate had rejected the said application on the ground that one of the sections for which the petitioners have been convicted is a non-bailable offence.

5. Under such circumstances, the petitioners were compelled to pay the fine in order to satisfy the said order of conviction. Thereafter, an appeal was preferred before the learned Additional Deputy Commissioner (Judicial), Jowai with a prayer to set aside and quash the impugned judgment dated 16.11.2020.

6. The learned Appellate Court after hearing the appeal being Criminal Appeal No. 6 of 2020 has passed a judgment dated 15.06.2021 whereby the appeal was dismissed only on the ground that the learned Appellate Court having acknowledged that the appellants/petitioners after the fine amount was deposited before the Trial Court, the sentence was accordingly served and as such the court has come to the finding that a

criminal appeal does not lie under such a situation.

7. Being aggrieved and dissatisfied by the said order dated 15.06.2021 the petitioners have accordingly approached this Court with this revision petition under Section 397/401 Cr.P.C with a prayer to set aside the impugned judgment dated 15.06.2021 passed by the court of Additional Deputy Commissioner (Judicial), Jowai in Criminal Appeal No. 6 of 2020 and further to set aside the order of conviction dated 16.11.2020 passed by the learned Judicial Magistrate First Class.

8. Heard Ms. C.B. Sawian, learned counsel for the petitioners who has submitted that the court of the learned Judicial Magistrate First Class has committed an error by rejecting the application under Section 389(3) Cr.P.C for suspension of the sentence apparently on the ground that one of the sections of law under which the petitioners were convicted is a non-bailable offence. However, the Trial Court has failed to consider the fact that the sentence of imprisonment is only for payment of fine of ₹ 2000/- (Rupees Two Thousand) only and in default thereof, actual imprisonment of seven days has been ordered.

9. The learned counsel has also submitted that the Appellate Court without considering the extent of the sentence imposed upon the

petitioners, even though rightly or wrongly the said sentence has been affected in full by way of payment of the stipulated fine, ought not to have rejected the appeal on this ground alone as it is opened to the petitioners to assert their right for upsetting the order of conviction by way of appeal before the appellate forum. In this regard, the case of Gurjant Singh v. State of Punjab, Criminal Appeal Nos. 1385-1386 of 2021 was cited by the learned counsel to say that in the said case the Hon'ble Supreme Court has held that “...an appeal against conviction could not have been treated as infructuous merely for the reason that the convicted appellant has served out the sentence awarded by the Trial Court...”

10. The learned counsel has further led this Court to the evidence recorded by the Trial Court and has submitted that though there are glaring inconsistencies in the FIR, statement of the complainant under Section 161 Cr.P.C and the evidence recorded before the court of the prosecution witnesses, coupled with the fact that for the alleged offence of mischief the said JCB has not been seized or produced in evidence, the prosecution has, therefore, failed to prove its case beyond reasonable doubt but such factor has not been taken into account in the impugned judgment of conviction. As such, it is a fit case for the Appellate Court to admit and hear the appeal.

11. It is, therefore, prayed that this petition may be allowed and the impugned judgment dated 15.06.2021 passed by the learned Appellate Court be set aside and quashed and on consideration of the contention and submission made herein, the impugned order of conviction dated 16.11.2020 passed by the learned Judicial Magistrate First Class be overturned by passing an order of acquittal in favour of the petitioners herein.

12. Mr. R. Gurung, learned GA, appearing for the State respondents has submitted that the order passed by the learned Appellate Court was passed within jurisdiction as there is a clear finding that the sentence imposed by the Trial Court has been complied with and therefore, no effective purpose will be served for the appeal to be heard and disposed.

13. On the merits of the case before the Trial Court, the learned GA has submitted that the conviction was based on the evidence of two witnesses, the complainant and the Investigating Officer (I/O) who are reliable witnesses and upon whose evidence, the Trial Court has come to the findings as reflected in the relevant judgment.

14. The learned GA has also submitted that it is not the quantity but the quality of evidence that is material for the court to come to a definite

finding and in view of the fact that the evidence of the sterling witness in the person of the complainant has been relied upon, therefore the impugned judgment and sentence cannot be faulted.

15. This petition is therefore devoid of merits and the same is liable to be dismissed by this Court, further submits the learned GA.

16. This Court has carefully given thought to the submission and contention of the rival parties herein and has also perused the petition in hand as well as the materials on record.

17. In the opinion of this Court what is required to be considered is whether the learned Appellate Court has rightly passed the impugned judgment or whether there has occasioned an error of jurisdiction or an illegality in the passing of the same which calls for exercise of the revisional power of this Court.

18. Facts as stated above may not be repeated. However, what is required to be pointed out is that the petitioners having been convicted and willing to assert their right to appeal have petitioned before the Trial Court to suspend their sentence so as to enable them to prefer the appeal. The Trial Court for the reasons indicated has apparently rejected their prayer on the ground that one of the sections involved is a non-bailable section.

19. Again, it would be proper to be reminded that the petitioners in their quest to approach the Appellate Court have unwittingly, as per their assertion, paid the fine in satisfaction of the sentence imposed. Thereafter, the appeal was preferred and as noticed above, the same was dismissed.

20. The issue to be considered here is whether the learned Appellate Court was right in rejecting the appeal on the ground that the appeal does not lie as the sentence was already served by the appellants/petitioners.

21. The answer to this has already been pointed out by the learned counsel for the petitioners when reference was made to the case of Gurjant Singh (supra) wherein, under somewhat similar circumstances where the Hon'ble High Court of Punjab & Haryana has dismissed an appeal by rendering it infructuous for the reason that the appellant therein had served out the sentence, on appeal, the Hon'ble Supreme Court has held that the appeal could not have been dismissed as infructuous and has remanded the matter to be heard and disposed of by the High Court. It may be mentioned that the facts of the said case before the Hon'ble High Court relates to a sentence awarded to the appellant which is five months' imprisonment with fine of ₹ 3000/-.

22. There is some similarity in the case before the Hon'ble Supreme

Court and the case of the petitioners herein, that is, as far as the element of sentence is concerned which is not so severe comparatively. Be that as it may, this Court applying the principle and ratio of the Gurjant Singh's case would observed that the learned Appellate Court has erred in passing the impugned judgment and the appeal could not have been rejected on the basis of reasons so given.

23. Viewed thus, the impugned judgment passed by the learned Appellate Court has been passed erroneously, the same cannot be sustained and is hereby set aside and quashed.

24. The appeal filed by the petitioners/appellant being Criminal Appeal No. 6 of 2020 before the learned Additional Deputy Commissioner (Judicial), West Jaintia Hills, Jowai is restored to its number and the same is directed to be heard and disposed of by the learned Appellate Court.

25. Registry to send back the Lower Court's Case Record.

26. Petition disposed of. No costs.

Judge

Meghalaya
05.06.2023
"Tiprilynti-PS"