

GAHC040008342023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
(ITANAGAR BENCH)

Case No. : Crl.Rev.P./14/2023

Maga Sakter
R/o Bank Tinali,
PO/PS Itanagar, Papumpare District, Arunachal Pradesh.
Phone No. 8132908579

VERSUS

Biri Piomey
R/o Polo Colony, Naharalgun, PO/PS Naharlagun, Papumpare District, Arunachal Pradesh.

Advocate for the Petitioner : Kago Taja

Advocate for the Respondent : T Gameh

BEFORE
HONBLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 11.09.2023

Heard Mr. K. Tama, the learned counsel for the petitioner
and also heard Ms D. Yoka, the learned counsel for the sole
respondent.

2. The petitioner has preferred an application under Section 397 Cr.P.C against the impugned Order dated 16.05.2023 passed by the learned Session Judge, Yupia in connection with criminal appeal No.09/2019.

3. The case of the petitioner is that the petitioner as an accused was convicted in C.R. No.47/2017 by the Court of learned Chief Judicial Magistrate, Yupia vide Judgment dated 07.08.2019 under Section 138 of the Negotiable Instrument Act, 1881 and sentenced to undergo simple imprisonment for 4(four) months and further to pay compensation of Rs.52,00,000/- (Rupees Fifty two lakhs) only, in default of payment of compensation amount, to undergo further simple imprisonment of 2(two) months.

4. An appeal was preferred against the said Judgment and Order dated 07.08.2019 passed by the learned Chief Judicial Magistrate, Yupia before the Court of Sessions Judge, Yupia which was registered as criminal appeal No. 09/2019. The Sessions Judge at the time of admitting the appeal, ordered that the appellant should pay 20% of the compensation amount which is around Rs.10,40,000/-(Rupees Ten Lakhs Forty thousand)only. Following the orders of the Sessions Court, the appellant paid the sum of Rs.5,70,000/-(Rupees Five Lakhs Seventy Thousand)only but the petitioner has failed to deposit the remaining amount of Rs.4,30,000/-(Rupees Four Lakhs Thirty Thousand)only. On his

inability to pay the remaining amount of Rs.4,30,000/-(Rupees Four Lakhs Thirty Thousand)only, the Sessions Court vide its order dated 16.05.2023 dismissed the appeal. Subsequently, the petitioner filed an application before the Sessions Court for restoration of the appeal on the ground that he was willing to pay the remaining compensation amount which was also rejected by the learned Sessions Judge, Yupia. Hence, this revision petition.

5. The learned counsel for the petitioner submits that dismissal of the appeal only on the ground of non payment of the interim compensation is not in interest of justice. There is no provision in NI Act which provides dismissal of an appeal for non payment of interim compensation amount. It is further submitted that the appeal was dismissed not on merit but only on the ground that the petitioner was not able to pay the remaining amount of the compensation. The learned counsel for the petitioner also submits that the petitioner is now ready to pay the remaining amount of compensation i.e. Rs.4,30,000/-(Rupees Four Lakhs Thirty Thousand)only before the first appellate Court. Filing of appeal is the statutory right of the petitioner. The learned counsel for the petitioner also submits that at this stage, it would be justified if on receipt of the amount, the appeal be admitted and after hearing both the sides, the appeal be decided on merit. In support of his submissions, the learned counsel for the petitioner has placed reliance on a case law- **(2022) 9 SCC 23 (Noor Mohammed Vs.**

Khurram Pasha).

6. On the other hand, the learned counsel for the sole respondent submits that she has no objection if on payment of compensation amount, the appeal be heard on merit.

7. Considering the entirety of the fact and the submissions of the learned counsel for the parties, the criminal revision petition is disposed of with a direction to the petitioner to deposit the remaining amount of compensation i.e. Rs.4,30,000/-(Rupees Four Lakhs Thirty Thousand)only in the Court of Sessions Judge, Yupia before admitting the appeal and on receipt of the said amount, the learned Sessions Judge shall admit the appeal and dispose of the matter on merit. The petitioner is given 1(one) month time from today to deposit the said amount before the Court of Sessions Judge, Yupia.

8. The order dated 16.05.2023 passed by the learned Sessions Judge, Yupia in criminal appeal No.09/2019 is set aside.

The criminal revision petition is disposed of, accordingly.

JUDGE

Comparing Assistant