

GAHC040011912023



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

Case No. : CrI.A./27/2023

Mara Budh
S/o Mr. Tapa Mara,
Resident of Vill. Amba, Doimukh, PO/PS Doimukh, Dist. Papumpare, Arunachal Pradesh.
Mobile No. 919862895640

VERSUS

Bengia Jayanta
S/o Mr. Bengia Hemanta,
Resident of Vill. Huto, near Shiv Mandir Doimukh, PO/PS Doimukh, Dist. Papumpare, Arunachal Pradesh.

Advocate for the Petitioner : Vijay Jamoh

Advocate for the Respondent :

BEFORE
HONBLE MR. JUSTICE BUDI HABUNG

JUDGMENT AND ORDER (ORAL)

Date : 14-12-2023

Heard Mr. V. Jamoh, learned counsel for the appellant and Mr. G. Taloh, learned counsel for the sole respondent.

2. This appeal under Section 378 of the Cr.P.C, 1973 is directed against the

order dated 20.07.2023, passed by the learned Chief Judicial Magistrate, Capital Complex, Yupia in C.R. Case No. 96/19 under Section 138 of NIA Act, 1881 by which the learned Chief Judicial Magistrate, Yupia has dismissed the said C.R. Case No. 96/19 for non-prosecution.

3. The case of the appellant in brief is that he filed a complaint case before the Court of the learned Chief Judicial Magistrate, Yupia against the respondent under Section 138 of the NIA Act, 1881 which was registered as CR Case No. 96/19. The trial proceeded, and after completion of evidence of the complainant witnesses, the accused was examined and his statement recorded under Section 313 Cr.P.C; thereafter, the case was fixed for evidence of the defence witnesses. And on 20.07.2023, the learned counsel for the applicant was present within the Court complex at Yupia, however as the case of the appellant was towards the last part of the cause list, the learned counsel for the appellant assuming that his matter will take some time to reach, he entered in the court No.1 of the High Court in the ground floor; however, when he came back to the Chief Judicial Magistrate court, he was informed that the case has just been called and it has been dismissed for non-prosecution.

4. Being aggrieved, the appellant filed this appeal praying for setting aside of the said impugned order amongst other on the following grounds: that the appellant was diligently prosecuting the complaint case by remaining present on all dates except on 18.05.2023 on which date the accused also remained absent for which the complainant/appellant alone cannot be made to suffer; that there was no deliberate inaction or default on the part of the appellant for remaining absent on 20.07.2023 inasmuch as, the learned counsel for the appellant was present within the Court complex on the said date; and for the inadvertent mistake of the counsel the appellant cannot be made to suffer; that the trial of

the complaint case has almost been completed and as such the question of appellant not being interested to pursue the matter does not arise; and that for a singular default on the part of the appellant on 20.07 2023 that too when the counsel was present within the court complex ready to appear, the trial court dismissing the case is grossly unjust and resulted in miscarriage of justice.

5. The record as called for, by this Court, have been received and I have perused the same.

6. The record reveals, that after completion of the evidence of the complainant, the accused was examined and his statement was recorded u/s 313 CrPC. The matter was then fixed on 22.02.2023, on which date, the complainant was present along with his learned counsel, but the accused remained absent, however, the accused was given one last opportunity to adduce evidence of the defence witnesses by fixing next date on 18.05.2023. On 18.05.2023, both the complainant and the accused remained absent; hence, the Court had fixed next date on 20.07.2023 for examination of DW 1 & 2 with a direction that the accused shall be present on that day without fail. And on 20.07.2023, the learned court recorded that the complainant remained absent without any steps and the accused was present along with his learned counsel. In absence of the accused, the learned Court observed that the complainant is not interested in pursuing the case and hence, it was dismissed for non-prosecution.

7. Mr. Jamoh, learned counsel for the appellant submits that as per order dated 18.05.2022, the DW-1 and 2 were to be examined on 20.07.2023, however, there is no any record of presence of DWs on that day. He further submits that in the NIA case while the case is dismissed, the accused is required to be acquitted, however, in the instant case, there is no order of accused being

acquitted in the case. The learned counsel for the appellant further submits that in the case under NIA as per the Section 143 Sub-clause III, it is clearly mentioned that every trial under this section shall be conducted as expeditiously as possible and endeavour shall be made to conclude the trial within 6 (six) months from the date of filing of the complaint. And in the instant case, the complaint under NIA Act was filed on 22.11.2019 and since then it has been nearly 3 (three) years and 6 (six) months, but the case is not yet been concluded. However, the proceeding of the case was at the last stage of the trial and at that stage, if the case is dismissed for default, the appellant would suffer injustice merely for singular default that too purportedly committed by the counsel of the complainant. Hence, prays for setting aside of the impugned dismissal order and for direction for early trial and disposal.

8. Mr. G. Taloh, learned counsel for the respondent submits that the appellant has not given sufficient cause for interference by this Court as the case was dismissed for non-prosecution of the complainant.

9. Heard both the learned counsel for the appellant as well as the respondent.

10. Upon consideration of the contentions made in the appeal and on perusal of the records, I find sufficient force in the submission of the learned counsel for the petitioner. As per records, the complainant remain present during entire trial except on 18.05.2023, on which date, the accused and the defence witnesses also remained absent and on 20.07.2023, the learned counsel for the complainant was present within the Court complex; however, due to inadvertent mistake by assuming that as his matter being listed in the last part of the cause list would take some time to reach, he went inside the court No.1 of the High Court, but when after sometime he went back to the CJM Court, he was

informed by the Peskar that the case has been dismissed for non-prosecution. When the learned counsel for the complainant was present within the court building and ready to attend the case and the same was in the knowledge of the opposite party, the matter could have been passed over for the time being or could have fixed another date. There has to be a sufficient reason for dismissal of the complaint especially when the trial of the case is at the last stage, and more so when the complainant had regularly been present during the entire trial period. Dismissal of the case at the last stage of the trial proceeding for non-appearance of the counsel for the complainant merely for one day, in my considered view would be too harsh under the facts and circumstances of the case. Since, the trial of the case is at the last stage, the complainant needs to be given one opportunity as the matter need to adjudicated and disposed of on merit.

11. Accordingly, for the reasons as discussed above, the impugned order, dated 20.07.2023 passed by the learned Court of Chief Judicial Magistrate, Yupia in CR case No.96/19 is interfered with and the same is hereby set aside and quashed. This criminal appeal stands allowed and disposed of.

Send back the record immediately.

JUDGE

Comparing Assistant