

GAHC040012462023



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

Case No. : Crl.Rev.P./22/2023

Bipu Tali and Anr.

S/o Late Tobi Tali, resident of Gemo Tali Village, PO and PS- Kamba, District West Siang, Arunachal Pradesh.

2: Rekar Tato

S/o Shri Lore tatlo, resident of Yaki-Tato village, PO and PS-Kamba, District West Siang, Arunachal Pradesh

VERSUS

The State of AP and Anr.
through the Public Prosecutor

2:Aya Hinam Self Help Group

represented by Shri Komli Lollen, Treasurer, Aya Hinam Self Help Group, Resident Gumin Nagar, PO & PS Aalo, West Siang District, Arunachal Pradesh.

Advocate for the Petitioner : Marto Kato

Advocate for the Respondent : P P of AP

BEFORE
HONBLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 12-09-2023

Heard Mr. M. Kato, the learned counsel for the petitioners and also heard Mr. G. Tado, the learned Additional Public Prosecutor for the State of Arunachal Pradesh.

2. The petitioners have filed an application under Sections 397/401 of the Cr.P.C, 1973 against the Judgment and Order dated 18.08.2023 and sentence dated 21.08.2023 passed by the learned Chief Judicial Magistrate-cum-Civil Judge (Senior Division), West Siang District, Aalo in C.R. Case No. 24/2018 (*Aya Hinam Self Group Vs. Shri Rekar Tato & Anr.*), whereby, the petitioners have been found guilty for the offence under Sections 138 of the Negotiable Instrument Act, 1881 and sentenced to pay a fine of Rs. 22,80,000/- (Rupees Twenty two Lakhs Eighty Thousand)only in default of payment of fine, the petitioners shall undergo simple imprisonment for a period of 1(one) year.

3. It is submitted by the learned counsel for the petitioners that the learned trial Court erred in law as well as facts in passing the impugned judgment as the learned trial Court has failed to appreciate the fact that neither there was any agreement between the petitioners and the respondent, nor they have approached the

respondent for any kind of loan. The said agreement dated 05.01.2018 was in fact executed between the respondent No.2 and one Shri Jarsa Gamlin. The petitioners were nowhere involved in the transaction which took place between the respondent No.2 and Shri Jarsa Gamlin. The petitioners were not even the signatories to the said agreement. As such, the impugned Judgment is liable to be set aside.

4. It is also the submission of the learned counsel for the petitioners that there is no any debt or liability or any dues to be paid by the petitioners to the respondent No.2. Since the petitioners have never taken any loan from respondent No.2, there is no any legally enforceable debt or any other liabilities on the part of the petitioners towards the respondent No.2. As such, the impugned Judgment and order passed by the learned trial Court is perverse and bad in law. As such, the petitioners have preferred this revision petition.

5. It is also submitted by the learned counsel for the petitioners that the petitioners have not preferred any appeal against the Judgment and Order as because as per the Section 148 of the NI Act, at the time of admitting the appeal, the petitioners have to pay 20% of the awarded amount. Hence, the petitioners have preferred

revision. It is prayed to admit the revision petition and issue notice to the respondent for further proceeding of the case.

6. On the other hand, the learned Additional Public Prosecutor has submitted that as the petitioners were convicted by the learned trial Court, their option is to file an appeal before the Court of Sessions. As it is a case of conviction, not acquittal, the revision does not lie at this stage.

7. I have considered the submissions of learned counsel for the parties. It appears from the available documents in the record that both the petitioners were convicted by the learned Chief Judicial Magistrate-cum-Civil Judge (Senior Division), West Siang District, Aalo under Section 138 of the NI Act and sentenced to pay a fine of Rs.22,80,000/-(Rupees Twenty two Lakhs Eighty Thousand)only and no imprisonment was imposed against the petitioners. However, it is a case of conviction.

8. Section 374 Cr.P.C deals with appeals from convictions;

- 1) Any person convicted on a trial held by a High Court in its extraordinary original criminal jurisdiction may appeal to the Supreme Court.
- 2) Any person convicted on a trial held by a Session

Judge or an Additional Sessions Judge or on a trial held by any other Court in which a sentence of imprisonment for more than seven years may appeal to the High Court.

3) Save as otherwise provided in sub-Section 2, any person,-

a) convicted on a trial held by a Metropolitan Magistrate or Assistant Sessions Judge or Magistrate of the first class, or of the second class, or

b) sentenced under Section 325 or

c) in respect of whom an order has been made or a sentence has been passed under Section 360 by any Magistrate, may appeal to the Court of Sessions.

9. Section 397 Cr.P.C deals with calling for records to exercise of powers of revision.

1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any

proceedings of such inferior Court, and may, when calling for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record.

- 10.** Section 401 Cr.P.C deals with High Court's Power of revision;
- 1) In the case of any proceeding the record of which has been called for by itself or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by Sections 386, 389, 390 and 391 or on a Court of Session by section 307 and, when the Judges composing the Court of revision are equally divided in opinion, the case shall be disposed of in the manner provided by section 392.
 - 2) No order under the section shall be made to the prejudice of the accused or other person unless he has had an opportunity of being heard either personally or by pleader in his own defence.
 - 3) Nothing in this section shall be deemed to authorise a High Court to convert a finding of acquittal into one of conviction.
 - 4) Where under this Code an appeal lies and no appeal is

brought, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed.

11. On a bare look at the aforesaid provisions, it reveals that in the case of conviction, an appeal would lie to the Court of Sessions under Sections 374 (3) (a) Cr.P.C. and thereafter, a revision to the High Court under Section 397/401 Cr.P.C and finally a petition before the Supreme Court seeking special leave to appeal. Thus, in case of conviction there will be four levels of litigation.

12. It is specifically mentioned in Section 401 Clause (4) that where under this Code an appeal lies and no appeal is brought, no proceedings by way of revision shall be entertained at the instance of the parties who could have appealed. In the instant case, it reveals that petitioners have been convicted by the trial Court, as such their first option is to file an appeal before the Sessions Court but not revision before this Court.

13. In the case of ***Duli Chand v. Delhi Administration*** reported in ***(1975) 4 SCC 649*** the Hon'ble apex court has held as under:-

"5.....The High Court in revision was exercising supervisory jurisdiction of a restricted nature and, therefore, it

would have been justified in refusing to re-appreciate the evidence for the purposes of determining whether the concurrent finding of fact reached by the learned Magistrate and the learned Additional sessions Judge was correct. But even so, the High Court reviewed the evidence presumably for the purpose of satisfying itself that there was evidence in support of the finding of fact reached by the two subordinate courts and that the finding of fact was not unreasonable or perverse."

In the case of ***State Vs. R. Soundirarasu*** reported in ***AIR 2022 SC 4218***, Hon'ble apex court has held as under:-

"75. In [Munna Devi v. State of Rajasthan & Anr.](#), (2001) 9 SCC 631: (AIR 2002 SC 107: 2002 cri LJ 225 (SC)), this Court held as under:-

"3.....The revisional power under [the Code of Criminal Procedure](#) cannot be exercised in a routine and casual manner. While exercising such powers the High Court has no authority to appreciate the evidence in the manner as the trial and the appellate courts are required to do. Revisional powers could be exercised only when it is shown that there is a legal bar against the continuance of the criminal proceedings or the framing of charge or the facts as stated in the first information

report even if they are taken at the face value and accepted in their entirety do not constitute the offence for which the accused has been charged."

76. Thus, the revisional power cannot be exercised in a casual or mechanical manner. It can only be exercised to correct manifest error of law or procedure which would occasion injustice, if it is not corrected. The revisional power cannot be equated with appellate power. A revisional court cannot undertake meticulous examination of the material on record as it is undertaken by the trial court or the appellate court. This power can only be exercised if there is any legal bar to the continuance of the proceedings or if the facts as stated in the charge-sheet are taken to be true on their face value and accepted in their entirety do not constitute the offence for which the accused has been charged. It is conferred to check grave error of law or procedure."

14. In view of the above, the revision is not admitted. The revision is disposed of at the motion stage as revision does not lie at this stage.

JUDGE

Comparing Assistant