

GAHC010166672023



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

Case No. : I.A.(CrI.)/649/2023

XXXXXXX
XXXXXXX

VERSUS

IN RE- INSPECTOR GENERAL OF PRISONS AND 3 ORS.
JAWAHAR NAGAR, KHANAPARA, GUWAHATI-781022.

2:THE SUPERINTENDENT

CENTRAL JAIL
TEZPUR
MAHABHAAIRAB
TEZPUR-784001.

3:ANIL KUJUR

S/O. SRI WARISH KUJUR
R/O. MOINAJULI
P.S. RANGAPARA
DIST. SONITPUR
ASSAM.

4:WARISH KUJUR

S/O LATE KARCHEL KUJUR
R/O. MOINAJULI
P.S. RANGAPARA
DIST. SONITPUR
ASSAM

Advocate for the Petitioner : MR. T J MAHANTA (SC, GHC)

Advocate for the Respondent : MS. D SAIKIA, AMICUS CURIAE(R-3)

Linked Case : CRL.A(J)/50/2019

ANIL KUJUR
S/O. SRI WARISH KUJUR
R/O. MOINAJULI
P.S. RANGAPARA
DIST. SONITPUR
ASSAM.

VERSUS

THE STATE OF ASSAM
REP. BY PP
ASSAM.

Advocate for : MS. DEBASHREE SAIKIA
AMICUS CURIAE
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM

Linked Case : CRL.A(J)/51/2019

WARISH KUJUR
S/O. LT. KARCHEL KUJUR
R/O. MOINAJULI
P.S. RANGAPARA
DIST. SONITPUR
ASSAM.

VERSUS

THE STATE OF ASSAM
REP. BY PP
ASSAM.

Advocate for : MS. R D MOZUMDAR
AMICUS CURIAE
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM

BEFORE
HONOURABLE MR. JUSTICE LANUSUNGKUM JAMIR
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : **31 .08.2023**
(Malasri Nandi, J)

Heard Mr. T.J. Mahanta, learned Standing Counsel, Gauhati High Court. Also heard Ms. S. Jahan, learned Additional Public Prosecutor for the respondent Nos. 1 and 2; Ms. D. Saikia, learned *Amicus Curiae* for the respondent No. 3; and Ms. R.D. Mazumdar, learned *Amicus Curiae* for the respondent No. 4.

2. This interlocutory application arises on the basis of a letter dated 28.06.2023 of Superintendent of Central Jail, Tezpur forwarded to the registry by the learned Additional Sessions Judge, (FTC), Sonitpur, Tezpur for necessary clarification vide letter dated 07.07.2023.

3. The learned Additional Sessions Judge(FTC) vide judgment dated 28.01.2019 convicted one Anil Kujur and his father Warish Kujur under Section 302/34 IPC in Sessions Case No. 215/2011 and sentenced to undergo rigorous imprisonment for life with a fine of Rs.5,000/-, in default rigorous imprisonment for further period of three months. Since after delivery of judgment, the two subsequently, lodged in central jail, Tezpur.

4. Subsequently, Anil Kujur and Warish Kujur filed Criminal Appeal No. 50(J)/2019 and Criminal Appeal No. 51(J)/2019 respectively before this Court challenging the judgment and order dated 28.01.2019 passed by the learned Additional Sessions Judge(FTC) in Sessions case No. 215/2011. This Court, vide common judgment dated 19.06.2023 passed in Criminal Appeal No. 50(J)/2019 and Criminal Appeal No.51(J)/2019, modified the conviction of the appellants from Section 302/34 to Section 304 Part-I IPC. In para 43 of the judgment, this Court observed that the appellants were in jail *hazot* for more than 11 years and the sentences were modified to that of the period of detention already undergone by the appellants. In para 45 of the judgment, the appellants were directed to be released if they were not wanted in any other case. The relevant para of the judgment are reproduced below-

“43. According to the learned counsel for the appellants, the appellants have served more than 11 years in jail hazot. We have gone through the LCR, which reveals that the case was committed to the Court of Sessions on 05.11.2011. Hence, it transpires that the appellants are in jail hazot for more than 11 years. Taking into account the facts and circumstances in which the offence has been committed, for the modified conviction under Section 304 Part I IPC, the sentence is modified to that of the period already undergone.

44. In the result, conviction of the appellant under Section 302 IPC, read with Section 34 IPC is modified as conviction under Section 304 Part-I IPC and the sentence is reduced to the period already undergone.

45. Both the appeals are partly allowed. The conviction under Section 302 IPC is set aside. The accused appellants be released forthwith, if not wanted in any other case.”

5. On receipt of the copy of judgment dated 19.06.2023, the

Superintendent, Central Jail, Tezpur vide letter dated 28.06.2023, informed the learned Additional Sessions Judge(FTC), Tezpur, Sonitpur, that:-

(i) The total period of imprisonment undergone by the accused/appellant Anil Kujur was 4 years 11 months 9 days (as per jail records).

(ii) The total period of imprisonment undergone by the accused/appellant Warish Kujur was 5 years 1 month (as per jail records).

It was also informed that the above period included the period of detention undergone during investigation and trial and as such, the actual period of imprisonment undergone by Anil Kujur and Warish Kujur did not tally with the period mentioned in the judgment dated 19.06.2023 passed by this Court. Therefore, a request was made to look into the matter and provide necessary clarification.

6. Mr. T.J. Mahanta, learned Standing Counsel, Gauhati High Court has submitted that the petition(I/A) is not maintainable in law for the reasons that as per Section 362 Cr.P.C., the Court has no power to recall/review its own order after the same has been pronounced as it would amount to sitting in appeal over its own order. The learned Standing Counsel further submitted that the submission made by the learned *Amicus Curiae* during argument were the product of misrepresentation of facts that the accused persons have been detained in custody for last 11 years. Therefore, this Court has power to clarify the said order.

7. The learned *Amicus Curiae* representing the respondent Nos. 3 and 4

have pointed out that this Court has no power to alter or review the judgment after putting signature except to correct a clerical or arithmetical error as such, this Court is not in a position to modify the order at this stage. However, the learned *Amicus Curiae*, have stressed their arguments on the point that both the accused/appellants be released accordingly as per the period undergone i.e. 4 years 11 months 9 days for Anil Kujur and 5 years 1 month for Warish Kujur. We have also heard the learned Additional Public Prosecutor and considered the submissions of learned *Amicus Curiae* and the Standing Counsel, Gauhati High Court.

8. The learned Additional Public Prosecutor Ms. S. Jahan, by referring the judgment of A.R. Antulay vs. R.S. Nayak, reported in 1988(2) SCC 602 has submitted that no man should suffer cause because of the mistake of the Court or the advocate. No man should suffer a wrong by technical procedure of irregularities. The learned Additional Public Prosecutor also pointed out that in the case of Vishnu Agarwal vs. State of U.P. and Anr. [2011 STPL(web)121SC], the Hon'ble Apex Court opined that Section 362 Cr.P.C. cannot be considered in a rigid and over technical manner to defeat the ends of justice. The learned Additional Public Prosecutor also has placed reliance on some other case laws i.e. Munshi Singh & Ors. vs. State of M.P. reported in MANU/MP/0127/1993.

In the said case, it was held that a clerical or arithmetical error is an error occasioned by any accidental slip or omission of the Court. It represents that which the Court never intended to say. It is an error apparent on the face of the record and does not depend upon its discovery on arguments or disputation. An arithmetical mistake is a

mistake of calculation and a clerical error is a mistake in writing or typing.

9. In the case of Nissar Ahmad Yatto vs. UT of J&K, reported in 2022 vol.5 JKJ267, wherein it was held that there can be no dispute with the proposition of law that a criminal court including a High Court does not have jurisdiction to review or alter its own judgment or order in view of specific bar contained in Section 362 Cr.P.C. but as it was dealing with a case of correction of arithmetical error which has occurred while calculating the percentage of Codeine Phosphate in the recovered drug, it was held that it was not a case of review but it was a case of correction of an arithmetical mistake.

10. Section 362 Cr.P.C. reads as follows-

“362. Court not to alter judgment.- Save as otherwise provided by this Code or by any other law for the time being in force, no court, when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error.”

11. On a bare look at the provision, it reveals that even otherwise Section 362 of the code places a bar on the court to alter or review its order and judgment. Once the judgment is pronounced and signed, the court becomes *functus officio* and therefore, no further alteration or review of the same is permissible save and except to correct clerical or arithmetical error.

12. Reverting to the impugned judgment dated 19.06.2023, it reveals

that the learned *Amicus Curiae* representing the respondent Nos. 3 and 4, submitted before this Court that the appellants have served more than 11 years in jail *hazot*. On the basis of bonafide belief/submission of learned Amicus Curiae, this Court passed the order that the appellants were in jail *hazot* for more than 11 years and taking into account the facts and circumstances in which the offence has been committed for the modified conviction under Section 304 Part I IPC, the sentence was modified to that the period already undergone.

13. Usually, the court appoints the amicus curiae to assist the court. It is not expected such irresponsible conduct in calculating the time period in jail *hazot* while making prayer for releasing the respondent Nos. 3 and 4 for the period undergone. It can be said that the judgment was delivered by this Court on erroneous premises and the order had been obtained by deliberately misrepresenting facts before this Court. As such, the order in question cannot be allowed to subsist.

14. After visualise the background of the case as well as the submissions of the learned counsel for the parties, this Court is of the view that we are dealing with a correction on misrepresentation of facts. Hence, it is not a case of review. Even otherwise, the High Court as a court of record, has inherent power to correct the record. It, as a court of record, has a duty to keep its record correctly and in accordance with law. In case any apparent error is noticed by the High Court or brought to its notice in respect of any order passed by it, the High Court has not only the power but a duty to correct it. This is a plenary power of the High Court being a superior court and the court of record. Therefore, once it comes to light that the party

concerned was not entitled to the order passed in its favour, it would be perfectly legal and also justified in so as to secure the ends of justice.

15. In the light of the aforesaid legal proposition as well as the background of the case, we assume that in view of the specific bar created in regard to exercise of the jurisdiction of the High Court to review its own order under Section 362 Cr.P.C. but in some rare cases, the High Court may do so where the judgment has been delivered on misrepresentation of facts.

16. Under such backdrop, this Court has given the clarification that the appellants in Criminal Appeal No. 50(J)/2019 and Criminal Appeal No. 51(J)/2019 are convicted under Section 304 Part-I IPC and sentenced to undergo rigorous imprisonment for 11 years. The period which they detained in custody shall be set off from the period of imprisonment imposed on them. The fine amount imposed by the learned trial court shall remain as same.

17. This interlocutory application be treated as part of common judgment dated 19.06.2023 passed in Criminal Appeal No.50(J)/2019 and Criminal Appeal No.51(J)/2019.

18 . With the above observation, the I/A stands disposed of.

JUDGE

JUDGE