

GAHC010159202020



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

Case No. : Crl.Pet./598/2021

NANDKISHORE BASFORE
SON OF LATE BHUGLI BASFORE
STATE BANK OF INDIA
BHANGAGARH BRANCH
GUWAHATI-781005
DIST. KAMRUP (M)
ASSAM

VERSUS

THE STATE OF ASSAM AND ANR
REP. BY THE PP
ASSAM

2:SRI ASWINI DAS
S/O SRI RAJEN DAS
R/O VILL- CHANGSARI
DIST- KAMRUP
ASSAM
PHONE 9954767528

Advocate for : MR D CHOUDHURY
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM AND ANR

**BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER**

19.01.2023

Pursuant to the order dated 05.01.2022, this Criminal Petition No. 598/2021 is heard along with the Criminal Revision Petition No. 7336/2020 and it is proposed to dispose of the same together, but, separately.

Heard Mr. D. Choudhury, learned counsel for the petitioner; Ms. S.H. Bora, learned Addl. P.P. for the State respondent No. 1; and Mr. H. Kalita, learned counsel for the respondent No. 2.

This petition under section 482 read with section 397 of the Cr.P.C. is preferred by the petitioner, namely, Sri Nandkishore Basfore for quashing the order dated 29.09.2021, passed in CR Case No. 3192/2016 by the learned Judicial Magistrate First Class, Kamrup [M]. It is to be mentioned here that vide impugned order, the learned court below has issued Non Bailable Warrant of Arrest against the petitioner.

The factual background leading to filing of the present petition is briefly stated as under :- "In connection with CR Case No. 3192/2016 under section 138 of the NI Act lodged by the respondent No. 2, Sri Aswini Das, the petitioner was convicted by the learned Judicial Magistrate First Class, Kamrup [M] at Guwahati and sentenced him to suffer simple imprisonment for 1 month and also to pay a fine of Rs. 3,50,000/- with default stipulation. Against the said judgment and order of conviction passed by the learned Judicial Magistrate First Class, Kamrup [M] at Guwahati, the petitioner has preferred one Criminal Appeal No. 163/2018 before the learned Addl. Sessions Judge, No. 3,

Kamrup, Guwahati. Thereafter, hearing learned counsel for both the parties, the learned first appellate court has dismissed the appeal and upheld the judgment and order of conviction passed by the learned Judicial Magistrate First Class, Kamrup [M] at Guwahati.

Being aggrieved by the aforesaid judgment and order of the learned Addl. Sessions Judge, No. 3 in Criminal Appeal No. 163/2018, the petitioner has preferred one Criminal Revision Petition No. 538/2020 before this court and while the same was pending for admission, the petitioner has filed one Interlocutory Application for suspension of the sentence and while the said IA was pending for consideration, the learned court below has issued NBWA against the petitioner.

Being highly aggrieved, the petitioner filed the present petition for quashing the impugned order dated 29.09.2021, passed by the learned Judicial Magistrate First Class, Kamrup [M] at Guwahati in CR Case No. 3192/2016 on the ground that at the relevant point of time Covid-19 Pandemic was prevalent and the petitioner could not move out of his house, because he is a comorbid patient and one revision petition has already been filed against the judgment and order of the learned Addl. Sessions Judge, No. 3 and in the event of allowing the aforesaid revision petition pending the CR Case in the learned court below will be infructuous and therefore, it is contended to allow this petition.

Mr. Choudhury, learned counsel for the petitioner submits that the order of issuing warrant of arrest suffers of non application of mind as at the relevant Covid-19 Pandemic was prevalent and the petitioner could not move out of his house because he is a comorbid patient, and therefore, it is contended to set aside the aforesaid order.

On the other hand Mr. Kalita, learned counsel for the respondent No. 2 submits that the impugned order of issuing NBWA by the learned court below suffers from no infirmity or legality, and therefore, it is contended to dismiss the petition.

Having heard the submission of learned counsel for both the parties, I have carefully gone through the petition and the documents placed on record and also perused the impugned order, dated 29.09.2021, passed in CR Case No. 3192/2016, by the learned Judicial Magistrate First Class, Kamrup [M], Guwahati.

It appears that after dismissal of the appeal by the learned Addl. Sessions Judge, No. 3, Kamrup, Guwahati the learned court below after receiving the records and on account of his failing to appear before the learned court below to serve out the sentence, by the petitioner, the learned court below has issued NBWA against him.

It appears that the Criminal Revision Petition filed by the petitioner is dismissed today. Further, having considered the record of the learned below in the light of submission of the learned Advocates of both side the impugned order is found to be suffered from no infirmity or illegality requiring any interference of this court, as the petitioner had failed to appear before the learned court below even after 1 month of passing the impugned judgment and order passed by the learned Addl. Sessions Judge, No. 3 on 02.01.2022.

In view of above, I find no merit in this petition and accordingly, the same stands dismissed.

However, the petitioner is granted 1 month time from today to surrender before the learned court below to serve out the sentence.

In terms of above this petition stands disposed of.

JUDGE

Comparing Assistant