

**HIGH COURT OF TRIPURA
AGARTALA
Crl.Petn. 32 of 2023**

Manir Ali,
S/o Late Suraj Ali
Resident of Ichai Joypur,
P.S Kadamtala, North Tripura

- -----Petitioner(s)

Versus

1. The State of Tripura,
Represented by the Home Secretary,
Civil Secretariat, New Capital Complex
P.O Kunjaban-799001

2. Rakman Ali,
S/o. Late Suraj Ali
Resident of Ichai Joypur,
P.S Kadamtala, North Tripura

-----Respondent(s)

For Petitioner(s)	:	Mr. D C Roy, Advocate
For Respondent(s)	:	Mr. R. Dutta, P.P
Date of hearing and date of delivery of judgment and order	:	12.01.2024
Whether fit for reporting	:	Yes/No

HON'BLE MR. JUSTICE T. AMARNATH GOUD

Judgment & order (Oral)

This a petition filed under Section 482 of the Criminal
Procedure Code 1973 for exercising the inherent power of this

Court against the Judgment dated 29.08.2023 passed by the Hon'ble Chief Justice in Crl. Rev. Petition No.46 of 2023.

2. The brief facts of this case is that on 22.07.2016 at about 9 a.m at Ichai Jaipur, the informant, Rakman Ali and his family members noticed that one Asit Nath was ploughing the land of the informant using a power tiller as per instruction of the accused persons. After noticing, the informant and his family members immediately raised objection and Asit Nath left that place. Thereafter, while the informant, his son Maharam Ali and daughters Rajna Begam and Rumena Begam were returning home, accused Gyash Uddin attacked Rumena Begum and while saving his sister, Maharam Ali was also assaulted by the accused Gyash Uddin along with other accused persons. The informant went to save his son and in course of that he was also assaulted by the accused persons. The neighboring people on hearing the hue and cry started coming to the place of occurrence and the accused persons in the mean time managed to flee away from there.

3. The informant lodged an ejahar regarding the incident with Kadamtala PS and based on the ejahar, Kadamtala PS case No. 41 of 2016, was registered and the I.O. on completion of the investigation submitted charge-sheet against all the six accused persons named Md. Manir Ali, Md. Gyash Uddin, Md.Gufur Uddin,

Md. Jainual Uddin, Md. Tajamul Ali and Md. Cherag Uddin U/Ss-341/325/506/34 of the Indian Penal Code, 1860, (*hereinafter referred as IPC*). The then learned CJM on receipt of the charge-sheet took cognizance of offence U/Ss-341/325/506/34 of IPC and sent the case record to the Court of Judicial Magistrate (1st Class), Dharmanagar, North Tripura.

4. Thereafter, the learned Judicial Magistrate (1st Class) in PRC (WP) 100 of 2016 framed the charges under sections 341/325/506 read with Section 34 of the IPC against all six accused persons and the same was read over and explained to them to which they pleaded not guilty and claimed to be tried. The prosecution adduced as many as 12 witnesses to establish the charges against the accused persons.

5. On perusal of the evidence and materials on record and on hearing the arguments of the Counsel of both sides, the Learned Court below ordered the following:

“ORDER

21. In the result, it is observed that the ingredients for the offence under section-341 is established against all the accused persons and the offence under section-325 of IPC is proved only against Md. Manir Ali.

Hence, the accused persons named Md. Manir Ali, Md. Gyash Uddin, Md. Gufur Uddin, Md. Jainual Uddin, Md. Tajamul Ali and Md. Cherag Uddin are convicted for the offence under section-341 of IPC and Md. Manir Ali is convicted for the offence under section-325 of IPC. This court also arrived at the conclusion that the prosecution has failed to prove its case against the accused persons under section- 506 IPC.

22. Considering the facts and circumstances of the case, I am of the opinion that it's not a fit case to invoke the provision under section-360 of Cr.P.C. or Probation of Offenders Act, 1958 as the accused persons had caused injuries in grave to the victim. In order to prevail peace and to avoid such occurrence, requires severity to have deterrent effect in the society.

23. Later on, heard the convicts on the quantum of sentence. They pleaded clemency and denied of perpetration of alleged offence.

24. Hence, I sentenced each of convicts to pay a fine of Rs. 300/- (Rupees five hundred) each for the offence under section-341 of IPC in default to suffer Simple Imprisonment for fifteen days (15) each and for the offence under section-325 IPC, the convict to undergo rigorous imprisonment of two months along with fine of Rs. 2000/- in default to payment of fine to undergo rigorous imprisonment of one 1 month.

25. The fine money, if realised, to be given to the complainant/victim.

26. Nazir is directed to keep safe custody of the fine money which is to be handed over to the complainant.

27. A bail bond of Rs. 30,000/- under the provision of section 389 Cr.P.C has been filed by the convict Md. Manir Ali with one surety of the like amount and also by the convicts named Md. Gyash Uddin, Md. Gufur Uddin, Md. Jainual Uddin, Md. Tajamul Ali and Md. Cherag Uddin of an amount of Rs. 30,000/- each.

28. Thus, the period of detention shall remain suspended against him for thirty days with a direction to submit the form of appeal by the convicts, failing which the law will take its own course.

29. The bail bond under the provision of 437-A Cr. P.C. for the period of appeal shall remain in force.

30. Furnished a free copy of this judgment to the convicted accused persons.

31. The case is disposed of on contest."

6. Aggrieved thereby, the petitioner preferred an appeal in the Court of the District & Sessions Judge, North Tripura, Dharmanagar being Criminal Appeal No. 02 of 2022. Vide order dated 25.07.2023, the learned first Appellate Court upheld and affirmed the conviction and sentence as passed by the learned Trial Court under Section 341 of the IPC is concerned. In so far as the sentence of imprisonment and fine under Section 325 of the IPC is concerned, it has been modified to rigorous imprisonment for two months along with fine of Rs.2000 (two thousand) each under Section 323 of IPC and with default stipulation.

7. Thereafter, the petitioner along with others challenged the judgment of learned First Appellate Court and has preferred a petition before this Court bearing registration No. Criminal Revision Petition no. 46 of 2023. Vide order dated 29.08.2023, passed by the Hon'ble Chief Justice of this Court, the same was disposed of in the following manner:-

"Considering the nature of the evidence and the sentence imposed under Section 341 of IPC and Section 325 of IPC on the respective accused persons, this Court does not find any ground to interfere in the findings of the learned Appellate Court. As such, the instant revision petition is disposed of with the aforesaid modification in the sentence part of the accused/petitioner No. 1, Md. Manir Ali."

8. Thereafter, the petitioner for moulding the reliefs has curved out a new method by filing the present Criminal Petition No. 32 of 2023 under Section 482 Cr.P.C., before this Court seeking the following reliefs:-

- "a. Admit this petition
- b. Issue notice upon the respondents and
- c. After hearing be pleased to release the petitioner as per provisions of Section 360 Cr.P.C or the Probation of Offenders Act.
- AND
- D. Would be further pleased to modify the imprisonment to suffer 2 months simple imprisonments.
- e. Further be pleased to direct the petitioner to pay fine only in commensurate with the offence U/s 323 I.P.C"

9. Heard Mr. D. C Roy, learned counsel appearing for the petitioner. Also heard Mr. R. Dutta, learned Public Prosecutor, appearing for the State-respondent.

10. Mr. D. C Roy, learned counsel appearing for the petitioner repeatedly made his submission that this is only a petty

offence where a small rift was there between the complainants and the petitioner. Due to such small issue, the petitioner has been suffering from erroneous orders and is entitled for relief from this Court. He further contended that court can always invoke its inherent powers under Section 482 Cr.P.C., and grant relief to his client herein in this present criminal petition.

11. On the other hand, Mr. R. Dutta, learned Public Prosecutor has made his submission that the present petition filed under Section 482 CrP.C is not maintainable and Section 362 of Cr.P.C also comes in the way of the petitioner, as the sentenced once passed cannot be altered. He also relied on the judgment of Hon'ble Supreme Court titled as ***State of Madhya Pradesh v. Man Singh reported in (2019) 10 SCC 161***, the relevant portion of the same is quoted hereunder:

"7. It is well settled law that the High Court has no jurisdiction to review its order either under Section 362 or under Section 482 CrPC. The inherent power under Section 482 CrPC cannot be used by the High Court to reopen or alter an order disposing of a petition decided on merits. After disposing of a case on merits, the Court becomes functus officio and Section 362 CrPC expressly bars review and specifically provides that no court after it has signed its judgment shall alter or review the same except to correct a clerical or arithmetical error. Recall of judgment would amount to alteration or review of judgment which is not permissible under Section 362 CrPC. It cannot be validated by the High Court invoking its inherent powers."

12. Heard both sides and perused the evidence on record.

13. This Court is of the opinion that once the petitioner has invited the order(s) from the court and the matter has ended in finality, the petitioner cannot challenge the same. If aggrieved,

the petitioner can approach before any other competent forum/Court. But the petitioner by way of filing this petition has approached this court under Section 482 Cr.P.C. This Court feels that this is only chance litigation and the hands of this court are tied under law and, accordingly, the petitioner is not entitled for any relief which is sought for.

14. The reliefs to which the petitioner is directly entitled when denied, the petitioner cannot find out an alternate means in order to obtain the main relief which is denied. When he is not entitled for direct relief, he is not equally entitled to claim the said relief indirectly. For the reasons indicated above the present criminal petition is dismissed as not maintainable.

15. With the above observation and directions, the instant Criminal petition stands dismissed. As a sequel, stay if any stands vacated. Pending application(s), if any also stand closed.

JUDGE

Paritosh

**SABYASACHI
GHOSH**

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SABYASACHI GHOSH

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