

GAHC040016692024

2024:GAU-AP:1130



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

Case No. : Crl.Rev.P./22/2024

Maga Sakter Son of Late Maga Ter, resident of Bank Tinali, Itanagar, PO and PS Itanagar, Papum Pare District, Arunachal Pradesh.

VERSUS

Biki Tamo
Son of Shri Biki Talang, resident of C Sector, Itanagar, PO and PS Itanagar, Papum Pare District, Arunachal Pradesh.

Advocate for the Petitioner : Khoda Tama, Tasso Dodung, R Barman, Jambey Tsering, Sumit Chhetri, T Lampung

Advocate for the Respondent : ,

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

Date of hearing : 13.12.2024

Date of Judgment & Order: 13.12.2024

JUDGMENT & ORDER(Oral)

Heard Mr. Sumit Chhetri, learned counsel for the petitioner.

2. The present criminal revision petition has been instituted by the petitioner, assailing an order, dated 12.11.2024, passed by the learned Sessions Judge, Yupia, in IA(Crl.) No. 306/2024.

3. The sole respondent, herein, had instituted the proceeding against the present petitioner under Section 138 of the N.I. Act.

4. The learned Chief Judicial Magistrate, Papum Pare District, Yupia, vide judgment & order, dated 23.03.2023, proceeded on consideration of the issue so arising therein, to hold that the petitioner, herein, is guilty of the offence under Section 138 of the N.I. Act and convicted and sentenced the petitioner, herein, to pay a fine of Rs. 1,18,00,000/- for the loss and damage sustained by the respondent, herein, due to non-payment of the cheque amount. It was further directed in the said order that the petitioner shall undergo simple imprisonment for a year in default of payment of fine.

5. It is seen that being aggrieved by the said judgment & order, dated 23.03.2023; the petitioner, herein, had instituted Crl. Appeal No. 02/2023.

6. The learned Sessions Judge, Yupia, vide order, dated 26.06.2023, passed in Crl. Appeal No. 02/2023, directed the petitioner, herein, to deposit 20% of the fine amount. However, the said amount not being so deposited; the learned appellate Court had vide order, dated 04.08.2023, granted further one week time to the petitioner, herein, for depositing 20% of the fine amount.

7. The matter was, thereafter, taken-up for consideration on 11.08.2023, and on the said date; the petitioner, herein, being personally present before the Court, had expressed his inability to deposit the 20% of the fine amount so awarded. Accordingly, the appellate Court, vide order, dated 11.08.2023, proceeded to dismiss the said appeal being Crl. Appeal No. 02/2023.

8. Being aggrieved; the petitioner, herein, had instituted the Criminal Revision

Petition being Crl.Revn.P. 32/2023, before this Court. This Court, vide order, dated 27.06.2024, on consideration of the issue arising in the matter, was pleased to dispose of the said criminal revision petition, by interfering with the order, dated 11.08.2023, passed by the learned Sessions Judge, Yupia, in Crl. Appeal No. 02/2023, and remanded back the matter to the Court of the learned Sessions Judge, Yupia.

9. In the said order, dated 27.06.2024; undertaking of the learned counsel was recorded that the petitioner, herein, be granted 3(three) months' time to deposit the 20% of the awarded fine amount before the learned appellate Court. This Court while permitting the petitioner, herein, to deposit the fine amount within a period of 90 days from the date of passing of the said order, dated 27.06.2024, further provided that in the event; the petitioner, herein, failed to deposit the 20% of the awarded fine amount, quoted-above; the learned appellate Court shall be at liberty to pass necessary order as per law. Thereafter, in terms of the directions passed by this Court vide order, dated 27.06.2024; the appeal being Crl. Appeal No. 02/2023 stood revived.

10. The petitioner, herein, had instituted IA(Crl.)306/2024 in Crl. Appeal No. 02/2023, praying for grant of further time to him, to deposit the 20% of the awarded fine amount. The said interlocutory application was taken-up for consideration by the appellate Court and vide order, dated 12.11.2024, had recorded the following conclusions:

***“5. This court vide order dated 26.06.23 directed the appellant for depositing of 20% of the fine awarded against the appellant i.e. Rs. 23,60,000/-within a month. However, the appellant has failed to pay the amount of money as ordered by this court and prayed for some more time for payment and accordingly vide order dated 04.08.23 one week time was granted to the appellant for payment of 20% of the sentence amount as provided under section 148 of N I Act. But even after extension of period for payment of the 20% of the sentence, the appellant failed to make said deposit amount and accordingly vide order dated 11.08.23, the appeal filed by the appellant stands dismissed.*”**

6. Thereafter being aggrieved with order dated 11.08.23, the appellant has approached Hon'ble Gauhati High Court, IPB, Yupia by way of Crl. Rvn. Ptn. No.32/23 praying for extension of time for payment of 20% of the sentence. Accordingly, vide order dated 27.06.24 passed in Crl. Rvn. Ptn. No.32/23, Hon'ble Gauhati High Court on agreement of both the parties is pleased to grant 90 days time since the date of order for payment of the amount as provided under section 148 of N I Act. It is also ordered by Hon'ble Gauhati High Court that in the event of failure of the appellant to deposit 20% of the fine awarded by the trial court, this court shall be at liberty to pass necessary order as per law.

7. It is observed from the record of the case that said 90 days granted by Hon'ble Gauhati High Court expires on 25.09.2024, however the appellant has failed to deposit said 20% of the sentence amount as ordered by Hon'ble Gauhati High Court.

8. Vide I.A No.306/24, the appellant has further prayed for extension of more time for depositing said 20% of fine amount before this court. It is prima facie found that when Hon'ble Gauhati High Court has granted 90 days' time for payment of the 20% of fine amount, as per judicial propriety this court has no jurisdiction to extend said time granted by Hon'ble Gauhati High Court.

9. Section 148 of N I Act provides that "Notwithstanding anything contained the Code of Criminal Procedure, 1973, in an appeal by the drawer against conviction under Section 138, the Appellate court may order the appellant to deposit such sum which shall a minimum of twenty percent of fine or compensation awarded by the trial court". In view of said provision of law, the appellant was directed to deposit said 20% of awarded amount but even after extension of the period from time to time by this court and even after expiry of the time granted by Hon'ble Gauhati High Court, the appellant has failed to deposit said 20% of fine amount before this court."

11. By recording the above conclusions; the learned appellate Court proceeded to hold that Crl. Appeal No. 02/2023, could not be admitted for hearing and the same was disposed of along with the interlocutory application being IA(Crl.)306/2024.

12. Being aggrieved; the petitioner, herein, has instituted the present proceeding before this Court.

13. On 04.12.2024, when the matter was taken-up for consideration, Mr. Chhetri, learned counsel for the petitioner, had undertaken that 20% of the fine amount as directed by the learned appellate Court, would be deposited on or before 13.12.2024 and accordingly, the learned counsel had prayed that the matter may be listed again on 13.12.2024. It was also provided in the said order, dated 04.12.2024; that in the event, the amount was not so deposited before the next date of listing of the matter; further orders as may be called in the matter,

on merits, shall be passed.

14. Today, when the matter was taken up for further consideration, Mr. Chhetri, learned counsel for the petitioner, has submitted that he had communicated to the petitioner, herein, about the directions passed by this Court vide order, dated 04.12.2024, as well as the undertaking so given in the matter on the petitioner's behalf that 20% of the fine amount, would be deposited by 13.12.2024.

15. Mr. Chhetri, learned counsel, has further submitted that inspite of repeated persuasions, the petitioner, herein, has not furnished any instructions in this connection to him and accordingly, he is handicapped in making any submissions in the matter.

16. In view of the above position and considering the conduct of the petitioner, herein, as would be evident from the default committed by him, both, with the directions passed by the learned appellate Court in Crl. Appeal No. 02/2023, as well as of the directions passed by this Court in Crl.Revn.P. 32/2023; this Court is of the considered view that the present criminal revision petition, would not mandate a consideration on merit and accordingly, the criminal revision petition stands dismissed.

17. In view of the above; the order, dated 12.11.2024, passed by the learned appellate Court in IA(Crl.)306/2024 in Crl. Appeal No. 02/2023, disposing of the interlocutory application i.e. IA(Crl.) No. 306/2024, along with Crl. Appeal No. 02/2023; would not call for any interference.

JUDGE

Comparing Assistant