

GAHC040016902023



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

Case No. : Crl.Rev.P./32/2023

Maga Sakter
S/o Lt. Maga Ter, R/o Bank Tinali Itanagar, PO/PS Itanagar, District papum Pare,
Arunachal Pradesh, Mobile No. 8132908579

VERSUS

Biki Tamo
S/o Shri Biki Talang, R/o C Sector Itanagar, PO/PS Itanagar, District papum Pare,
Arunachal Pradesh.

Advocate for the Petitioner : J Tsering

Advocate for the Respondent : Hage Lampu

BEFORE
HONBLE MR. JUSTICE BUDI HABUNG

ORDER

Date : 27-06-2024

Heard Mr. K. Tama, learned counsel for the petitioner. Also heard Mr. H. Lampu, learned counsel for the respondent.

2. The case as discernible from the record show that the learned Court of Chief Judicial Magistrate, Yupia by a judgment and order dated 23.03.2023 passed in complaint case no. 26/2017 found the accused/petitioner herein guilty

for offence under section 138 of the NIA Act, 1881 and has convicted and sentenced him to pay a fine of Rs. 1,18,00,000/- only, and Rs. 2, 00,000/- only for loss and damage sustained by the complainant/respondent herein within a period of 3(three) months and ordered the accused/petitioner herein to undergo simple imprisonment for another one year in default of payment of fine.

3. Being aggrieved by the said conviction and sentence order, the accused preferred the criminal appeal No. 02/2023 before the learned Court of Sessions Judge, Yupia. The learned Sessions Court by an order dated 26.06.2023, while admitting the said appeal had ordered the appellant/petitioner herein to deposit 20% of the fine amount, i.e., Rs. 23,60,000/- only before the said appellate Court. However, the appellant/petitioner herein failed to deposit 20% of the fine awarded amount within 1(one) month. Thereafter, by an order dated 04.08.2023, the learned appellate Court granted further one week time to the appellant for deposition of 20 % of the awarded fine amount. However, the appellant again failed to deposit 20% of the fine awarded amount within the extended 1 (one) week time. As a result, by an order dated 11.08.2023, the said appeal was dismissed.

4. It is the said order dated 11.08.2023 which is assailed in the present criminal revision petition amongst others on the ground that the learned Sessions Court, Yupia by the said impugned order has dismissed the appeal filed by the appellant not on merit but only on the ground that the appellant has failed to deposit 20% of the fine awarded amount by the learned Trial Court within the stipulated time provided to the appellant. The said order according to the petitioner is not sustainable in law.

5. The learned counsel for the petitioner submits that the section 148 of the Negotiable Instrument Act does not make the deposition of 20% of the awarded amount mandatory. And in view of the above law provision and the decision of the Hon'ble Supreme Court in the case of ***Jamboo Bhandari Vs. Madhya Pradesh State Industrial Development Corporation Limited and Ors*** reported in ***(2023) 10 SCC 446***, the learned Sessions Court could not have passed the impugned order dated 11.02.2023 dismissing the appeal filed by the petitioner on the ground of non-deposition of 20% of the awarded fine amount. And as the appellate/petitioner was faced with some financial difficulties at the relevant period due to which he could not deposit the awarded fine amount, the appellate authority ought to have considered the case of the appellant.

6. However, at this stage, leaving aside the merit of the case, and petitioner having arrived into a consensus agreement with the respondent, the learned counsel for the appellant submits that the appellant/petitioner herein should be given a sufficient time, not less than 3(three) months to deposit 20% of the awarded fine amount before the learned appellate court and the impugned order be set aside.

7. The learned counsel for the respondent Mr. H. Lampu, while conceding with the submission of the learned counsel for the petitioner have agreed with the request and the above proposal made by the learned counsel for the petitioner, however, on the condition that in the event of the failure on the part of the appellant to deposit the 20% of the awarded fine amount before the learned Appellate Court within the stipulated time period of 90 (ninety) days from today, the learned Appellate court shall be given liberty to pass necessary orders as per law.

8. Considering the submission made by the parties and in view of the above consensus agreement entered into by the learned counsel for the parties at bar; however, without going into the merit of the case, this criminal revision petition is disposed of with a direction to the petitioner/appellant to deposit the 20% awarded fine amount before the appellate court (Sessions Court, Yupia) within a period of 90 days from the date of passing of this order. It is made clear that in the event of the petitioner/appellant's failure to deposit the 20% of the fine amount awarded by the learned Trial Court as mentioned above, the learned appellate court shall be at liberty to pass necessary order as per law.

9. Accordingly, and in view of the above, the impugned order dated 11.08.2023, passed by the learned Court of the Sessions Judge, Yupia in CrI. Appeal No. 02/2023 is hereby set aside. The matter is remanded back to the Court of Sessions Judge, Yupia. The parties are directed to report before the Sessions Court on 10.07.2024 for further necessary order.

10. With the observation made herein above, this criminal revision petition stands disposed of in terms.

11. Return the LCR immediately.

JUDGE

Comparing Assistant