

GAHC010006542011



2024:GAU-AS:12787

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

Case No. : Crl.Rev.P./226/2011

SMTI DIPTA DEB
W/O LT. AMAR DEB R/O BAMUNIMAIDAN, P.S. CHANDMARI, DIST.
KAMRUP, ASSAM.

VERSUS

THE STATE OF ASSAM

Advocate for the Petitioner : MR.B K MAHAJAN, MR H DAS,AMICUS CURIAE,MR.R
ALI,MRN J DAS,MR.A CHOUDHURY,MR.P K DAS

Advocate for the Respondent : , ,,,PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

JUDGMENT & ORDER (ORAL)

Date : 13-12-2024

1. Heard Mr. N. Mahajan, learned counsel for the petitioner and Mr. K.K.Das, learned Additional Public prosecutor, Assam for the sole respondent.

2. The present criminal revision petition under Section 401 read with Section 397 of the Code of Criminal Procedure, 1973 is filed challenging the legality, propriety and correctness of the judgment and order dated 03.12.2010 passed by the learned Chief Judicial Magistrate Kamrup in connection with Case No. 4555^C/2008 convicting the petitioner and sentencing her to undergo Imprisonment for 3 (three) months and to pay a fine of Rs. 2,000/- and in default of payment of fine, to undergo Simple Imprisonment for another 2 (two) months. Further, the challenge is against the judgment and order dated 05.05.2011 passed by the learned Sessions Judge, Kamrup in Criminal Appeal No. 1/2011 upholding the impugned judgment and order dated 03.12.2010, as noted above.

3. The prosecution story in nutshell is that on 09.04.2007, a team of officers of Food and Civil Supplies, Kamrup and a team of Officers of Indian Oil Corporation Ltd. made a raid at the hotels/restaurants of Bhangagarh area and at about 03:00 pm, they entered into the premises of Lazeez Fast Food, a hotel situated at Bhangagarh near G.S. Road and having checked the kitchen room of the aforesaid hotel, they found one domestic LPG cylinder with a gas stove being used in commercial purpose. During such raid, the aforesaid teams found the petitioner as Manager of said hotel and asked her to produce relevant permission for using domestic LPG cylinder in hotel but she failed to produce any such permission. Thereafter, the Inspector Ganesh Boro had seized the cylinder preparing seizure list and recorded her statement and left the cylinder in the zimma of one Sanjib Kalita, who was a staff of M/s Padmaja Gas Agency, Bilpar. Said Inspector had laid Offence Report on 21.07.2008 against the accused/petitioner to stand trial in the Court under Section 7 of the Essential Commodities Act, 1955 (E.C. Act, in short) for contravention of Clause 3(1)(c) and Clause 7(1)(b)(c) of the LPG Cylinder (Regulation of Supply and Distribution) Order, 2000. On receipt of summon, the accused/petitioner appeared before the learned Trial Court and subsequently, the charge framed under Section 7(1)(a)(II) of the E.C. Act was explained to her, which she pleaded not guilty and accordingly, the trial was proceeded. Thereafter, the learned Chief Judicial Magistrate, Kamrup, Guwahati, by the judgment and order dated 03.12.2010 convicted the accused/petitioner and sentenced her to undergo imprisonment for a period of 3 (three)

months and also to pay a fine of Rs. 2,000/- and in default of payment of fine, to undergo Simple Imprisonment for another 2 (two) months and the same was also affirmed by the learned Sessions Judge, Kamrup vide judgment and order dated 05.05.2011, as noted herein above.

4. Being aggrieved, the present petition is filed.

5. Mr. Mahajan, learned counsel for the petitioner, at the outset, submits that he shall not challenge the impugned order of conviction on merit and shall confine his submission for grant benefit of probation to the accused/petitioner.

6. Mr. Mahajan, learned counsel for the accused/petitioner argues that the accused/petitioner is entitled for the benefit under Sections 360/361 Cr.P.C. and under the Probation of Offenders Act, 1958 (hereinafter referred to as Act, 1958) which had not been granted by both the learned Courts below. Mr. Mahajan, learned counsel for the accused/petitioner further submits that the accused/petitioner had not been convicted previously for any offence and she is first time offender.

7. According to Mr. Mahajan, learned counsel for the accused/petitioner though the learned Trial Court ought to have considered for granting the benefit under the Act, 1958, however, the same was rejected only on the consideration that the accused/petitioner had committed the instant crime knowingly and at the same time, the learned Appellate Court even did not consider to grant benefit to her without citing any reasons. Thus, failed to properly apply the provision of law in this regard.

8. Mr. Das, learned Additional Public prosecutor, Assam has objected to such prayer of the accused/petitioner for granting benefit of probation.

9. I have heard the submissions advanced by the learned counsels for the parties.

10. This Court has perused the records of the learned Trial Court including the evidence of the witnesses as well as the judgments of the learned Courts below.

11. This Court after perusal of the materials available on record has not found any patent error or illegality in the judgments. Therefore, this Court will now deal with the entitlement of the petitioner of the benefit under the Act, 1958.

12. It is well settled that Act, 1958 is a milestone in progress of modern liberal trend of reform in the field of Penology. It is the result of recognition of the doctrine that the object of criminal law is more to reform the individual offender than to punish him. It was also held by the Hon'ble Apex Court in the case of ***Ved Prakash Vs. State of Haryana*** reported in ***1981 1 SCC 447***, that sentencing an accused person is a sensitive exercise of discretion and not a routine or mechanical prescription acting on hunch. The Trial Court should collect necessary material to award a just punishment in circumstances. It was further held that the social background and the personal factors of the crime doer are very relevant in this regard.

13. In the case of ***Sita Ram Paswan Vs. State of Bihar*** reported in ***AIR 2005 SC 3534***, the Hon'ble Apex Court has laid down certain principles for exercise of discretionary power under the Act and the consideration required. The Hon'ble Apex Court opined that while exercising the discretionary power under the Act, 1958, the Courts are to consider the circumstances of the case, the nature of offence and the character of the offender. While considering the nature of offence, the Court must take a realistic view of the gravity of the offence, the impact which the offence had on the victim. It was concluded by the Hon'ble Apex Court that the benefit available to the accused under Section 4 of the Act, 1958 is subject to the Limitation embodied in the provision and the word 'may' clearly indicates that the discretion is vested with the Court whether to release the offender in exercise of power under sections 3/4 of the Act, 1958, having regard to the nature of the offence, the character of the offender and overall circumstances of the case.

14. It was further held by the Hon'ble Apex Court that such power can be exercised by the Court even at the appellate or revisional stage or also by the Apex Court hearing appeal under Article 136 of the Constitution of India.

15. Now in the backdrop of the aforesaid settled propositions of law, let this Court consider the arguments advanced by the learned counsel for the parties.

16. In the case in hand, the offence was committed on 09.04.2007. The nature of offence cannot be said to be heinous in the given circumstances of the case. It is also asserted by the learned counsel for the accused/petitioner that the accused/petitioner has not committed any offence of similar nature or to say any offence prior to the incident or during pendency of this appeal till date. The learned Additional Public Prosecutor, Assam has also submitted that he has no instruction as regards any criminal activities of the accused/petitioner. This Court has also considered that the accused/petitioner has suffered for almost 13 years litigating in the Court and facing trial, appeal and revision.

17. Considering the above stated facts and without entering into the merit of the impugned judgments and following the relevant provisions and the settled propositions of law and the period of lapse from the date of incident as well as the nature of allegation, this Court is of the considered opinion that this is a fit case where the benefit of provisions of the Probation of Offenders Act, 1958 should be given to the accused/petitioner by this Court in exercise of its revisional power. Accordingly, for the reasons recorded hereinabove, the petitioner, namely, **Smti Dipta Deb**, be given the benefit under the provisions of the Probation of Offenders Act, 1958 and accordingly, the sentence is modified to that effect and it is provided that instead of sending her to jail, she should be given the benefit of Section 4 of the Probation of Offenders Act, 1958.

18. Accordingly, it is directed that the petitioner, namely, **Smti Dipta Deb**, will file one surety to the tune of Rs. 10,000/- along with personal bond before the learned Trial Court i.e., Chief Judicial Magistrate Kamrup and undertake to the effect that the petitioner shall maintain peace and good behaviour during the period of one year from today. The aforesaid bond be filed by the petitioner within a period of 2 months from the date of this judgment.

19. With the aforesaid, the criminal revision petition stands allowed.

20. LCR be returned back.

JUDGE

Comparing Assistant