

GAHC010010802013



2024:GAU-AS:11030

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

Case No. : Crl.Rev.P./372/2013

RIDHWAN HUSSAIN RAMADAN
S/O ANOWAR HUSSIAN R/O HOUSE NO. 40, GREENLAND, BAGHARBARI,
P.S. DISPUR, P.O. PANJABRI, GHY-37 DIST. KAMRUP M, ASSAM.

VERSUS

ANOWAR KHAN
RANI BAZAR BUILDING 3RD FLOOR, KAMARPATTY ROAD,
FANCYBAZAR, P.O. and P.S. PANBAZAR, GHY-1, DIST. KAMRUP M, ASSAM.

Advocate for the Petitioner : MR.P SHARMA, MR.K M HASSAN,MR.K H KHANDAKAR

Advocate for the Respondent : MR.M BORAH, MRP DOLEY,MS.P PATHAK,MR.A K
BHUYAN,MS.B BORA,MS.N CHOUDHURY

BEFORE
HON'BLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

12-11-2024

1. Heard Mr. K.M.Hassan, learned counsel for the petitioner. Also heard Ms. N. Choudhury, learned counsel for the respondents.

2. By the present revision petition, the petitioner, namely, **Ridhwan Hussain Ramadan**, who is convicted in the Complaint Case being CR Case No. 769^C/2010 by the learned Sub-Divisional Judicial Magistrate (S)-II, Kamrup, Guwahati under Section 138 of the Negotiable Instruments Act, 1881, has challenged the judgment and sentence dated 20.06.2013 passed by the learned Additional Sessions Judge (FTC) No. 3, Kamrup Guwahati, whereby the learned Court below upheld the judgment and conviction dated 04.01.2013 passed in the aforesaid case by the learned Sub-Divisional Judicial Magistrate (S)-II, Kamrup, Guwahati.

3. The complaint was filed with an alleged fact that the accused/petitioner has taken a loan of Rs. 21,00,000/- (Twenty one lacs) from the complainant in discharge of debt and issued three numbers of post dated cheques bearing Nos. (i) 022838 dated 07.07.2009, (ii) 022837 dated 09.07.2009 and (iii) 022836 dated 12.07.2009 amounting to Rs. 7,00,000/- (seven lacs) each which were dishonoured.

4. The complainant examined himself as PW-1 and proved several documents.

5. The present petitioner as an accused contested the said case by pleading not guilty to the offence under Section 138 of the NI Act and examined himself under Section 313 CrPC as DW-1.

6. The defence case as unfolded during the cross-examination as well as under Section 313 CrPC is that the petitioner/accused had taken a loan from the daughter of the complainant and the complainant has pressurized him to issue cheque in his name and accordingly, the accused/petitioner had issued cheques in his name. Therefore, he has no liability towards the complainant rather it was to the daughter of the complainant.

7. The learned Trial Court after appreciation of the oral as well as the documentary evidence led by the parties had found the present petitioner/accused therein guilty under Section 138 of the NI Act and convicted him as recorded herein above.

8. Being aggrieved with the same, the accused/petitioner approached the Appellate Court by filing the Criminal Appeal being Crl. Apl. 26/2013 arising out of said CR Case No. 769^C/2010 and after re-appreciation of the evidence and the materials available on record,

the Appellate Court by its judgment and order dated 20.06.2013 upheld the judgment and conviction dated 04.01.2013 passed by the learned Trial Court.

9. Thereafter, the accused/petitioner has filed the present revision petition assailing both the aforesaid judgment and orders.

10. Taking note and the order of the learned Appellate Court, by order dated 05.11.2013 passed in the present revision petition, this Court asked the petitioner/accused to surrender before the learned Trial Court to serve the sentence within a period of 30 (thirty) days and noting the fact that the petitioner/accused did not surrender in terms of the Appellate Court's order dated 20.06.2013, directed the petitioner/accused to produce his Surrender Certificate. However, no such Surrender Certificate has been produced before the Court by the petitioner/accused and he has not surrendered till date.

11. In exercise of its inherent power, this Court can set right a patent defect or an error of jurisdiction or of law, can pass an order to prevent abuse of process and for securing ends of justice. Such power can be exercised where the decision under challenge is grossly erroneous, there is non-compliance of provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. It is equally well settled that a revisional jurisdiction of the High Court should not be exercised in a routine manner.

12. The Hon'ble Apex Court in ***Chandra Babu vs State*** reported in ***2015 (8) SCC 774*** held that normally revisional jurisdiction should be exercised in a question of law. However, when factual appreciation is involved, then it should be exercised in the class of cases resulting in a perverse finding. The Supreme Court went to say that the power is required to be exercised so that justice is done and there is no abuse of power by the Court.

13. Therefore, let this Court examine the facts of the present case in the touchstone of the aforesaid principle of law.

14. In the case in hand, the complainant, i.e., Shri Anowar Khan, PW-1, through his oral as well as documentary evidence has been able to establish that the liability of the complainant inasmuch as only defence that has been projected by the accused/petitioner is that the debt

is due to his daughter and not to him. However, cheques were issued by the complainant. Such statement of the accused/petitioner has neither been supported by any evidence nor the accused/petitioner could discharge his initial burden.

15. This Court is in agreement with the findings recorded by the learned Court below which are based on sound reasoning. In the considered opinion of this Court and as discussed herein above, the learned Court below has duly appreciated the evidence on record and the conclusion arrived at on the basis of such appreciation of evidence cannot be termed as a decision which could not have been arrived at on the basis of evidence available on record. This Court has not found anything as regards as patent defect of jurisdiction or of law. The learned counsel has not also been able to show non-compliance of any provisions of law or that the findings is based on no evidence or that the material evidence is ignored or that the judicial discretion is exercised arbitrarily or perversely.

16. For the reasons recorded herein above, this Court is not inclined to interfere with the well reasoned decisions of the learned Court below. Accordingly, the present revision petition of the petitioner named above, stands dismissed.

17. LCR be sent back.

JUDGE

Comparing Assistant