

GAHC010043442024



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

Case No. : Crl.Pet./233/2024

BHOLANATH SHAW
S/O LATE KEDARNATH SHAW
R/O A.T. ROAD,
BESIDES STATE BANK, DIGBOI, P.O. AND P.S. DIGBOI, DIST. TINSUKIA,
ASSAM

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

2:SRI PRAFULLA SAIKIA
S/O LT. BANESWAR SAIKIA
R/O HIJUGURI
P.O. BAHBARI AND P.S. HIJUGURI
DIST. TINSUKIA
ASSAM
NEW ADDRESS-
NEW ADDRESS-BORGURI
UKANIMARIA BONGALI GAON

OPPOSITE OLD SP OFFICE
P.S. TINSUKIA
DIST. TINSUKIA
ASSAM

PIN- 78619

Advocate for the Petitioner : MS. RUKMINI BARUA

Advocate for the Respondent : PP, ASSAM

BEFORE

HONOURABLE MR. JUSTICE KAUSHIK GOSWAMI

ORDER

04.03.2024

Heard Ms. P. Barua, learned counsel for the petitioner. Also heard Mr. K.K. Das, learned Additional Public Prosecutor, appearing for the State of Assam.

This is an application under Section 482 of the Code of Criminal Procedure, 1973 praying for quashing and setting aside the order dated 19.01.2024 passed by the learned Additional Sessions Judge, (FTC-1), Margherita in Criminal Appeal No. 03(2)/2019 and prayer for restoration of the proceedings of Criminal Appeal No. 03(2)/2019 in the Court of the learned Additional Sessions Judge, (FTC-1), Margherita.

The case of the petitioner is that his father had a licensed revolver which he had deposited before the Digboi Police Station. However, after making such deposit, the revolver was missing and accordingly a case was registered against the accused constable before whom the revolver was deposited.

The case was registered and trial commenced and ultimately the accused constable was acquitted. Thereafter, the Criminal Appeal No. 03(2)/2019 was preferred.

In the said criminal proceedings, the appellant was absent on 19.01.2024 due to his mother's illness.

The Court of the learned Additional Sessions Judge, (FTC-1), Margherita upon the petitioner being absent on that date, dismissed the appeal for default.

Ms. P. Barua, learned counsel for the petitioner submits that the non-appearance of the petitioner before the trial court is not deliberate and willful.

She further submits that it is because of the injury that the appellant's mother sustained for which the appellant was absent on 19.01.2024.

Mr. K.K. Das, learned Additional Public Prosecutor has no instructions to oppose the prayer for restoration.

I have heard the submissions at the bar and perused the materials available on record.

It appears from the order dated 19.01.2024, that since the appellant was absent without steps, the Court of the learned Additional Sessions Judge, (FTC-1), Margherita, by order dated 19.01.2024 was pleased to dismiss the appeal for default.

The grounds averred in the petition for restoration appears to be *bonafide* and good grounds.

It is because in connection with the health condition of the mother of the appellant that the appellant could not appear before the trial court on 19.01.2024. It is categorically averred in paragraph No. 10 of the criminal petition, that on 17.01.2024, i.e. two days prior to the date, on which the matter was posted before the trial court, the petitioner had to rush to Tinsukia and get his mother admitted for diagnosis as well as for treatment for the injury sustained and because of that situation the petitioner could not appear before the trial court

Considering the same, in the interest of justice, the order dated 19.01.2024 is hereby quashed and set aside.

Accordingly, the Criminal Appeal No. 03(2)/2019 is restored back before the learned Additional Sessions Judge, (FTC-1), Margherita.

With the aforesaid observations and directions, the criminal petition is disposed of.

JUDGE

Comparing Assistant