

GAHC010055452021



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

Case No. : Crl.Rev.P./95/2021

DR. TARUN CH SARMA
EX. PRINCIPAL, UTTAR KAMPITH MAHAVIDYALAYA (SR), JAGARA, R/O
NALBARI TOWN, BIDYAPUR, WARD NO.-3, P.O., DIST-NALBARI (ASSAM)

VERSUS

MOHIT CHAMARIA AND 2 ORS
S/O MADANLAL CHAMARIA, PROP. JYOTI ELECTRICALS, L.N.B. ROAD,
NALBARI, R/O NALBARI, TOWN, WARD NO.-6, NALBARI MUNICIPALITY
DIST-NALBARI (ASSAM), PIN-781335

2:UTTAR KAMPITH MAHAVIDYALAYA (SR)
JAGARA
REPRESENTED BY ITS PRINCIPAL AND SECRETARY
UTTAR KAMPITH MAHAVIDYALAYA (SR)
JAGARA
P.O.-JAGARA
P.S.-NALBARI
DIST-NALBARI (ASSAM)
PIN-781310

3:PRINCIPAL AND SECRETARY
UTTAR KAMPITH MAHAVIDYALAYA (SR)
JAGARA
P.O.-JAGARA
P.S.-NALBARI
DIST-NALBARI (ASSAM)
PIN-78131

Advocate for the Petitioner : MR. S N KRISHNATRAYA

Advocate for the Respondent : MR. S CHAMARIA (r-1)

:: BEFORE ::

HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

O R D E R

19.03.2024

Heard Mr. S.N. Krishnatraya, the learned counsel appearing for the petitioner. Also heard Mr. S. Chamaria, learned counsel representing the respondent.

2. This is an application under Section 397 of the Code of Criminal Procedure read with Section 401 of the said Code challenging the impugned judgment and order dated 17.12.2020 passed by the learned Chief Judicial Magistrate, Nalbari in N.I. Case No.42/2015.

3. The petitioner Dr. Tarun Ch. Sarma (hereinafter referred to as the petitioner only) was the Principal of Uttar Kampith Mahavidalaya (Sr.), situated at Jagara, Nalbari. On behalf of the said College, he had issued a cheque of ₹1,94,600/- to the Respondent No.1, who supplied some materials to the College. The cheque was issued on 30.12.2014 and on that day, the petitioner retired from service. The cheque was dishonoured by the Bank. Therefore, the Respondent No.1 filed the case under Section 138 of the N.I. Act against the College, its present Principal and the petitioner.

4. The trial court acquitted the present petitioner from the offence under Section 138 of the N.I. Act.

5. The Uttar Kampith Mahavidalaya (Sr.), Jagara was convicted and was sentenced to pay fine of ₹1,94,600/-.

6. The trial court directed that in default of payment of fine, the present Principal of the said College i.e. accused no.2 and the present petitioner shall undergo S.I. of 3(three) months each.

7. This is the reason why the present revision petition has been filed. The question

that is raised by the petitioner is that once he is acquitted from this case, why he is made liable to pay the fine.

8. Mr. Chamaria submits that instead of filing this revision petition under Section 397 and 401 of the Criminal Procedure Code, the petitioner should have filed an appeal before the Sessions Court. According to Mr. Chamaria, since there is a provision of appeal before the Court of Sessions, the petition under Section 397 of the CrPC is not maintainable.

9. Mr. Krishnatraya, on the other hand, submits that since the trial court has committed a mistake in law, this Court has jurisdiction to entertain this revision petition under Section 397 of the CrPC.

10. I have considered the submissions made by the learned counsel of both sides.

11. The petitioner was acquitted from the offence under Section 138 of the N.I. Act and Uttar Kampith Mahavidalaya (Sr.), Jagara and its present Principal was made liable for the aforesaid offence. Therefore, they are liable to be sent to imprisonment if they fail to pay the fine. The present petitioner was acquitted and it means that he was relieved from the entire case. Therefore, the impugned order passed by the learned Chief Judicial Magistrate, Nalbari is, *prima facie*, erroneous.

12. The impugned judgment stands modified accordingly. If Uttar Kampith Mahavidalaya (Sr.), Jagara fails to pay the fine of ₹1,94,600/-, only its present Principal would be liable to be sent to imprisonment. The present petitioner need not be sent to imprisonment if Uttar Kampith Mahavidalaya (Sr.), Jagara fails to pay the fine.

13. The present revision stands allowed and disposed of with the aforesaid direction.

Send back the lower court records.

JUDGE

Comparing Assistant