

GAHC010077622022



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

Case No. : CrI.L.P./25/2022

M/S JAIN AGENCIES AND ANR.
BEHIND R.K TOWER, REHABARI, GUWAHATI, ASSAM

2: SRI SANJAY KR. JAIN
S/O CHAINSUKH JAIN

AUTHORISED SIGNATORY FOR M/S JAIN AGENCIES
A.K AZAD ROAD
GUWAHATI 781008
DIST KAMRUP M ASSAM
BYE LANE NO. 2
SARUMOTORIA
DISPUR
GUWAHATI 78100

VERSUS

THE STATE OF ASSAM AND 2 ORS.
REPRESENTED BY PP ASSAM

2:SRI BHUPESH SARMA
PROPRIETOR
M/S DINESH TV ELECTRONICS
SS ROAD
SAHIDA MARKET
LAKHTOKIA
GUWAHATI 1
KAMRUP M ASSAM

3:M/S DINESH TV ELECTRONICS
S ROAD
SAHIDA MARKET
LAKHTOKIA
GUWAHATI 1

KAMRUP M ASSA

Advocate for the Petitioner : MR. K BHATTACHARJEE

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA
ORDER**

26.02.2024

Heard Mr. K. Bhattacharjee, learned counsel for the appellants. Also heard Mr. D. Das, learned Additional Public Prosecutor for the State respondent No.1 as well as Mr. A. Tiwari, learned counsel for the respondent Nos. 2 and 3.

This is an application filed under Section 378 (4) of the Code of Criminal Procedure, 1973 praying for granting leave to file appeal against the judgment and order dated 24.03.2022 passed by the Court of learned Judicial Magistrate First Class, Kamrup (M), Guwahati in C. R. Case No.2944^c/ 2015 under Section 138 of N. I. Act.

It is submitted by the learned counsel for the appellants, Mr. Bhattacharjee that the complaint case filed by the present appellants as a complainant was dismissed solely on two grounds that there was a mistake of names between Amit Kumar Jain and Anil Kumar Jain and apart from that the learned Trial Court did not consider the differences between the authority letter and the power of Attorney. It is contended by the appellants that he was the authorized person, but, the learned Trial Court had passed the order considering the complainant as the power of attorney holder and accordingly, the Trial Court passed the order, considering the view of the Hon'ble Apex Court reported in **2014 (11) SCC 790 [A. C. Narayan vs. State of Maharashtra]**, whereby, dismissing the complaint case.

Being aggrieved and dissatisfied with the impugned judgment dated 24.03.2022 passed by the Court of learned Judicial Magistrate First Class, Kamrup (M), Guwahati in C. R. Case No.2944^c/ 2015 under Section 138 of N. I. Act, the instant leave petition is preferred by the appellants to grant leave to file an appeal against the judgment dated 24.03.2022.

In this regard, Mr. Tiwari, learned counsel for the respondent Nos. 2 and 3 raised objections and submitted that not only there was a mistake of name, but, the complainant also failed to produce the authority letter at the time of filing of the complaint petition and also, the person named, Anil Kumar Jain or Amit Kumar Jain was not called for, as a witness herein this case. Thus, the learned Trial Court had discussed the detail of the case in the judgment passed in C. R. Case No.2944/2015 on 24.03.2022 and rightly dismissed the complaint case.

He also submits that there is no point to allow the appeal to file against the acquittal of the present respondents, as the present respondents are facing trial since 2015 and in the year 2022 only the order was passed after 7 years of pendency of the case and hence, for no reason they cannot be dragged again in connection with this case and accordingly, he prays for dismissal of the same.

Considering the submissions made by the learned counsels of both sides as well as considering the fact that the entire case is based on law point, I find it appropriate to grant leave to file the connected appeal.

Registry to do the needful in this regard and thereafter, shall list the connected appeal in its usual course.

With above observations, this criminal leave petition stands disposed of.

Accordingly, the learned counsel for the appellants is directed to furnish a copy of the memo of appeal to the learned counsel for the respondents.

JUDGE

Comparing Assistant