

GAHC010106162010



2024:GAU-AS:12585

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

Case No. : Crl.Rev.P./140/2010

JIBAN BORA @ BUBUL
S/O LT. TILAK BORA VILL- BORDUP JARANIGAON P.S. GOHPUR, DIST.
SONITPUR, ASSAM.

VERSUS

THE STATE OF ASSAM

Advocate for the Petitioner : MR.K K PARASAR, MR.B CHETRI

Advocate for the Respondent : , PP, ASSAM

BEFORE
HON'BLE MR. JUSTICE ARUN DEV CHOUDHURY
ORDER

09-12-2024

- 1.** Heard Mr. B. Chetri, learned counsel for the petitioner and Mr. B. Sarma, learned Additional Public Prosecutor, Assam for the sole respondent.
- 2.** This criminal revision petition is filed under Section 401 read with Sections 397/482 of the Code of Criminal Procedure, 1973 assailing the judgment and order dated 10.12.2009 passed by the learned Judicial Magistrate First Class, Biswanath

Chariali in G.R. Case No. 419/2006 whereby the accused/petitioner was convicted under Section 498(A) IPC and was sentenced to undergo Rigorous Imprisonment for 6 (six) months and also to pay a fine of Rs. 2,000/- (two thousand) and in default of payment of fine, to undergo Simple Imprisonment for another 1 (one) month. The further challenge made is against the judgment and order dated 04.03.2010, passed by the learned Additional Sessions Judge, FTC, Biswanath Chariali, Sonitpur in Criminal Appeal No. 1(S-I)/2010 whereby the judgment and conviction dated 10.12.2009 was upheld.

3. Though notice was issued to the informant, i.e., the wife of the accused/petitioner, office note dated 21.10.2019 reflects that steps were taken through the registered post with A/D on 21.10.2019 however, no A/D card has been returned. Considering the aforesaid, service is presumed.

4. Mr. Chetri, learned counsel for the petitioner submits that during the pendency of this revision petition, the husband and the wife had amicably settled their dispute inasmuch as the informant wife had in the meantime remarried with one Sri Bijoy Bhushan Deb on 11.04.2016 and that she is leading her peaceful married life. In that regard, an affidavit was sworn before the Executive Magistrate, Biswanath Chariali and accordingly, an additional affidavit has been filed in the present case incorporating the said affidavit.

5. This Court has perused the aforesaid affidavit. As per the said affidavit, the wife has declared that she got married to one Sri Bijoy Bhushan Deb, son of late Rohini Mohan Deb, resident of Ward No. 4 of Rangapara Town, District-Sonitpur on 11.04.2016 and is leading a peaceful married life with her present husband.

6. However, the wife has not entered appearance to raise any dispute as regard the affidavit executed before the Executive Magistrate, Biswanath Chariali as well as the additional affidavit which has been submitted by the accused/petitioner before this Court.

7. It is stated by the learned counsel for the petitioner that as the wife got re-married, therefore, she is not interested that her former husband who is the present petitioner be punished for the commission of offence under Section 498(A) IPC in connection with G.R. Case No. 419/2006 as noted above.

8. The power under Section 482 CrPC or Section 528 of BNSS, 2023 is an inherent power and such inherent power can be exercised to quash a criminal proceeding or a criminal complaint but while doing so the Court is to follow certain principles. Such power can be exercised, amongst others, when the offences alleged are overwhelmingly and predominantly civil in character or when such dispute arises out of matrimonial relationship or family disputes and the parties have resolved the entire disputes amongst themselves. While exercising such directory power it is to be seen that such offences if compromised shall not affect the society at large.

9. Considering the materials available on record including the charge sheet, the statements of witnesses and the affidavit sworn by the parties, it is the opinion of this Court that as the parties have amicably resolved the disputes and that the offence does not involve any heinous or serious offence and also that if the offences are allowed to be compounded that will have no serious impact on the society, the power under Section 482 CrPC or Section 528 of BNSS, 2023 can be exercised in the given facts of the present case.

10. In the aforesaid backdrop, this Court is of the view that this is a fit case where the power under Section 482 CrPC or Section 528 of BNSS, 2023 can be exercised to set aside and quash the aforesaid impugned judgment and orders of the learned Courts below on being amicably settled.

11. Accordingly, this criminal revision petition is allowed by setting aside and quashing the judgment and order dated 10.12.2009 passed by the learned Judicial Magistrate First Class, Biswanath Chariali in G.R. Case No. 419/2006 and the judgment and order dated 04.03.2010 passed by the learned Additional Sessions Judge, FTC,

Biswanath Chariali, Sonitpur in Criminal Appeal No. 1(S-I)/2010.

12. LCR be returned back.

JUDGE

Comparing Assistant