

GAHC010117622016



2024:GAU-AS:9945

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

Case No. : WP(C)/5290/2016

DEBOJIT PHUKAN
S/O. SRI DIBAKAR PHUKAN, VILL. BORBIL NO.2, TIPAM ROAD, P.O. and P.S.
DIGBOI, DIST. TINSUKIA, ASSAM.

VERSUS

THE STATE OF ASSAM and 2 ORS.
REP. BY THE CHIEF SECY. TO THE GOVT. OF ASSAM, DISPUR, GHY.-06.

2:THE GAUHATI HIGH COURT

GUWAHATI REP. BY THE REGISTRAR GENERAL AT GUWAHATI-01.

3:THE REGISTRAR VIGILANCE

GAUHATI HIGH COURT
GUWAHATI-01

For the Petitioner(s) : Mr. M. Nath, Sr. Advocate
: Mr. D. P. Borah, Advocate
: Ms. A. Bhattacharjee, Advocate
: Ms. D. L. Deka, Advocate

For the Respondent(s) : Mr. T. J. Mahanta, SC, GHC
: Mr. T. Gogoi, Advocate
: Ms. S. Konwar, Jr. Government Advocate

Date of Hearing : 30.09.2024
Date of Judgment : 30.09.2024

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT AND ORDER (ORAL)

Heard Mr. M. Nath, the learned Senior counsel assisted by Mr. D. P. Borah, the learned counsel appearing on behalf of the Petitioner and Ms. S. Konwar, the learned Junior Government Advocate appearing on behalf of the Respondent No.1. I have also heard Mr. T. J. Mahanta, the learned Senior counsel assisted by Mr. T. Gogoi, the learned counsel appearing on behalf of the Respondent Nos. 2 and 3.

2. The petitioner herein has challenged the order dated 22.03.2016 issued by the Registrar (Vigilance), Gauhati High Court as well as have sought for quashing of the notice dated 30.04.2016 in GR Case No.2082/2013.

3. The case of the Petitioner in brief is that an FIR was lodged on 04.12.2013 against the petitioner which was registered and numbered as Tinsukia P.S. Case No.921/2013 under Sections 448/336/427/34 of the Indian Penal Code. Subsequent thereto, a GR case was registered being GR Case No.2082/2013 before the Court of the learned Chief Judicial Magistrate, Tinsukia wherein the trial commenced on submission of the Charge Sheet vide No.2/14 dated 21.01.2014 wherein the petitioner was mentioned as the sole accused person. Thereupon the charges were framed against the petitioner under sections 448/336/427 of the Indian Penal Code read with section 3 of Prevention of Damage to Public Property Act, 1984 (for short 'the Act of 1984') by the learned Chief Judicial Magistrate, Tinsukia.

4. At this stage, this Court finds it relevant to take note of that the records of GR Case No.2082/2013 was called for by this Court. A perusal of the said order sheet reveals that on 12.09.2014 charges were framed under Sections 448/336/427 of the Indian Penal Code read with Section 3 of the Act of 1984. It is further seen that on 08.05.2015, two witnesses were examined, cross-examined and thereupon discharged and the Court upon closing the evidence of the prosecution fixed 21.05.2015 for examination of the accused under Section 313 of the Code of Criminal Procedure, 1973 (for short 'the Code').

5. On 21.05.2015, the Petitioner who was the accused was examined under Section 313 of the Code and he declined to adduce defence evidence and fixed 30.05.2015 for arguments. It is further seen from the records that on 30.05.2015, the learned Chief Judicial Magistrate, Tinsukia passed the following order which is extracted herein below.

“Accused Debojit Phukan is present today. Heard arguments forwarded by the Ld. Advocates for both sides. Considered the same.

Later on, judgment pronounced in open Court, written in separate sheet kept tagged with C/R. After due consideration of the materials on record as well as submissions from Ld. Advocates it is seen that the prosecution side has failed to prove the allegations forwarded against Accused Debojit Phukan through evidences of witnesses. As a result, Accused is found not guilty of commission of alleged offences in this case, and is acquitted and is set at liberty. His bailor to be relieved of liability of bail bond after six months from the date of this order. Seized articles to be destroyed in due course of time as per law.

This case disposed of accordingly.”

6. From a perusal of the above order, it is seen that the petitioner herein was exonerated of the charge and acquitted. It is also seen that the said order specifically refers to a judgment pronounced in open Court written in separate sheets kept, tagged with case records. It is however relevant to take note of that an entire perusal of the case records reveals that there was no judgment in separate sheets kept which was tagged with the case records. It is also relevant to take note of that the present case is not only the case wherein the said Chief Judicial Magistrate, Tinsukia was involved in acquitting an accused person without preparation and passing a judgment. The communication dated 22.03.2016 which have been challenged in the instant proceedings also shows that there were 45 cases wherein the Chief Judicial Magistrate had committed such dereliction of his duty.

7. At this stage, this Court finds it relevant to take note of an order dated 24.08.2012 passed by the Division Bench of this Court in WP(C) [Taken up] No.3954 of 2012 wherein the learned Division Bench of this Court categorically held that unless judgment is prepared and signed, mere oral pronouncements cannot be acted upon nor can an aggrieved party take remedy against such a judgment. The said order dated 24.08.2012 is reproduced herein under:

“On surprise inspection by the Joint Registrar (Vigilance) of this Court it was noticed that Shri Abhizeet Kashyap, Munsiff No.2, Sivasagar and Smti Sabeena Mazumdar, Judicial Magistrate First Class, Sivasagar, had disposed of certain cases without writing the judgment. The question arose whether the said cases should be treated to have been disposed of. The matter has been put up on the judicial side to consider this question.

We have heard Sri N. Choudhury, learned counsel representing the Registry of the High Court.

It has been submitted that unless the judgment is written and signed, the cases cannot be treated to have been disposed of merely by oral pronouncement.

*This appears to be the correct position of law. In **IQBAL ISMAIL SODAWALA Vs. THE STATE OF MAHARASHTRA AND OTHERS (1975) 3 SCC 140**, after referring to earlier judgment in **SURENDRA SINGH VS. STATE OF U.P. [1954 SCR 330 : AIR 1954 SC 194]** it was observed:*

“10. The above decision was referred to by this Court in the case of Surendra Singh v. State of U.P. [1954 SCR 330 : AIR 1954 SC 194 : 1954 Crl LJ 475] and it was observed that Section 537 of the Code of Criminal Procedure does as much the same thing on the criminal side as Sections 99 and 108 on the civil. This Court in that decision dealt with a criminal case wherein death sentence had been awarded. The case in the High Court was heard by a Bench of two Judges. The judgment was signed by both of them but it was delivered in Court of one of them after the death of the other. It was held that there was no valid judgment and the case should be reheard. Arriving at that conclusion, this Court took the view that a judgment is the final decision of the court intimated to the parties and the world at large by formal “pronouncement” or “delivery” in open court and until a judgment is delivered, the Judges have a right to change their mind.”

Unless judgment is prepared and signed, mere oral pronouncement cannot be acted upon, nor can aggrieved party take remedy against such a judgment. Oral pronouncement without written judgment cannot be treated as judgment in the eye of law.

Accordingly, we direct that the cases in which judgments have not been written cannot be treated to have been disposed of. The said cases be treated to be pending and be put up before the concerned court for appropriate orders in accordance with law.

A copy of this order be sent to the District & Sessions Judge, Sivasagar, for compliance.”

8. This Court has also taken note of Section 353 and 354 of the Code which stipulates as regards the judgment to be passed in every trial by any criminal Court of original jurisdiction as well as the language and the contents of the judgment. In Section 354(1) of the Code, it has been categorically mentioned that the judgment referred to in Section 353 shall contain the points for determination, the decision thereon, and the reasons for the decision. It has also been specifically mentioned in Clause (d) of Section 354(1) that if it be a judgment of acquittal, the judgment shall state the offence of which the accused is acquitted and direct that he shall be set at liberty. Under such circumstances, if this Court duly takes note of the order dated 30.05.2015 by no stretch of imagination, the same can be considered to be a judgment falling within the ambit of Section 353 and 354 of the Code.

9. It is further relevant to mention that in the said order dated 30.05.2015, there is a specific reference of a judgment written in separate sheet and kept tagged with the C/R which is not there. In the opinion of the Court, the criminal proceedings being GR Case No.2082/2013 cannot be said to have been culminated without there being a judgment more so when the trial had already commenced and statement of the accused person was taken under Section 313 of the

Code. Under such circumstances, this Court does not find any illegality in the notice dated 30.04.2016.

10. Be that as it may, this Court, however, observes that the petitioner upon appearing before the concerned Magistrate, the proceedings of GR Case No.2082/2013 shall continue in terms with Section 326(1) of the Code meaning thereby that the present Magistrate before whom the said proceedings being GR Case No.2082/2013 would continue shall proceed from the stage of completion of recording of the statement of the accused person under Section 313 of the Code and declining of the accused to adduce evidence.

11. This Court directs the Registry to forthwith send the records to the Court of the Chief Judicial Magistrate, Tinsukia and the learned Chief Judicial Magistrate, Tinsukia shall issue summons to the petitioner and proceed from the stage as directed hereinabove.

12. With above observations and directions, the instant writ petition stands disposed of.

JUDGE

Comparing Assistant