

GAHC010137532024



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

Case No. : Crl.Pet./807/2024

SURESH KUMAR KASHLIWAL
S/O MR. D. CHAND KASHLIWAL, R/O ROOPNAGAR, KUMARAPARA, P.S.-
BHARALUMUKH, PIN-781008, DIST- KAMRUP (M), ASSAM

VERSUS

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

2:BENUDHAR DAS
S/O LATE BHOROT CH. DAS
R/O H.NO. 46
NAWJAN ROAD
UZAN BAZAR P.S.-LATASIL
DIST- KAMRUP (M)
ASSA

Advocate for the Petitioner : MR A TEWARI

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MR. JUSTICE KALYAN RAI SURANA

11/07/2024

Heard Mr. A Tewari, learned counsel for the petitioner. Also heard Mr. K Baishya, learned Additional Public Prosecutor for the State respondent No. 1 and Mr. D Thousen, learned counsel for the respondent No. 2.

2. The case of the petitioner is that he was convicted by order dated 04.12.2019 passed by the learned Judicial Magistrate, First Class, Kamrup (Metro), Guwahati in C.R. Case No. 1399^c/2014, which was a proceeding under Section 138 of the Negotiable Instruments Act, 1881. The petitioner was sentenced to undergo Simple Imprisonment for 12 (twelve) months and to pay a compensation of Rs.42,26,554/- towards the amount of the dishonoured cheque with a stipulation that in default in paying the compensation amount, the petitioner shall undergo Simple Imprisonment for another 4 (four) months. Criminal Appeal No. 03/2020 preferred against the said judgment and order of conviction and sentence was dismissed.

3. Pursuant to NBWA issued by the learned Trial Court, the petitioner was arrested on 05.07.2024 to serve out the sentence and he is in judicial custody since then.

4. The son of the petitioner and the respondent No. 2 have entered into a compromise deed vide Deed of Compromise Agreement dated 08.07.2024 and it is projected that the matter has been amicably settled on compromise and therefore, the petitioner is praying for quashing of the judgment and order dated 04.12.2019 passed by the learned Judicial Magistrate, First Class, Kamrup

(Metro), Guwahati in C.R. Case No. 1399^c/2014 as well as the appellate judgment and order dated 21.12.2020 passed by the learned Sessions Judge, Kamrup (Metro), Guwahati.

5. The learned counsel for the respondent No. 2 has submitted that he has appeared on instructions of the respondent No. 2 and as the matter has been amicably settled, he is instructed to support the compromise agreement between the son of the petitioner, namely, Ankit Kashliwal and the respondent No. 2 vide Deed of Compromise Agreement dated 08.07.2024.

6. The learned Additional Public Prosecutor has no objection as the complaint case was registered on the basis of dishonoured cheque which is a dispute between the petitioner and the respondent No. 2.

7. In view of the Deed of Compromise Agreement dated 08.07.2024 between the respondent No. 2 and Ankit Kashliwal, the Court is of the considered opinion that the said compromise agreement is not against the public policy of the State. As both sides have agreed for a compromise of the proceedings of C.R. Case No. 1399^c/2014 which was under Section 138 of the NI Act, 1881 for dishonoured of a cheque issued by the petitioner, the Court is inclined to accept the compromise and the proceedings of (i) C.R. Case No. 1399^c/2014; (ii) order dated 04.12.2019 passed by the learned Judicial Magistrate, First Class, Kamrup (Metro), Guwahati in C.R. Case No. 1399^c/2014 and (iii) order dated 21.12.2020 passed by the learned Sessions Judge, Kamrup (Metro), Guwahati in Criminal Appeal No. 03/2018 stand quashed in view of the Deed of Compromise Agreement dated 08.07.2024. This order is subject to the Deed of Compromise Agreement dated 08.07.2024.

8. Accordingly, this criminal petition stands allowed at the motion stage on

no objection by the learned counsel for the respondent No. 2.

9. The learned counsel for the respondent No. 2 undertakes to file his Vakalatnama during the course of the day.

10. The petitioner is at liberty to move the learned Judicial Magistrate, First Class, Kamrup (Metro), Guwahati to file an appropriate application for release of the petitioner in connection with the proceedings of C.R. Case No. 1399^c/2014.

JUDGE

Comparing Assistant