

GAHC010155622024



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

Case No. : I.A.(CrI.)/704/2024

M.M. HARDWARE STORES AND ANR.
A PROPRIETORSHIP FIRM REP. BY SRI ASHOK KUMAR MALPANI, S/O
LATE MURULIDHAR MALPANI HAVING ITS H.O CUM SHOP AT FANCY ALI,
P.S., P.O. AND DIST.- JORHAT, ASSAM, PIN- 785001.

VERSUS

MD. ABZAL KHAN @ ABZAL RAJJAK AND ANR
S/O GULAM HUSSAIN KHAN, VILL.- FANCY ALI, P.S., P.O. AND DIST.-
JORHAT, ASSAM, PIN- 785001.

2:THE STATE OF ASSAM
REP. BY LEARNED P.P.
ASSAM

Advocate for the Petitioner : MS K BHATTACHARYYA, MS K BHATTACHARYYA,MS K SARMA

Advocate for the Respondent : PP, ASSAM, G UDDIN,MR A K AZAD

Linked Case : CrI.Rev.P./530/2023

MD. ABZAL KHAN @ ABZAL RAJJAK
S/O GULAM HUSSAIN KHAN

VILL.- FANCY ALI
P.S.
P.O. AND DIST.- JORHAT

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REP. BY LEARNED P.P.
ASSAM.

Advocate for : G UDDIN
Advocate for : PP
ASSAM appearing for M.M. HARDWARE STORES AND ANR.

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

14/08/2024

Heard Mr. P Borah, learned Senior counsel assisted by Ms. K Bhattacharyya, learned counsel for the applicant/respondent No. 1/complainant. Also heard Mr. G Uddin, learned counsel for the opposite party No. 1/petitioner and Ms. N Das, learned Additional Public Prosecutor, Assam for the opposite party No. 2/respondent No. 2.

2. An amount of Rs. 2,00,000/- paid by the opposite party No. 1 to the applicant by way of a cheque was dishonored. As such, the applicant as a complainant filed a complaint case before the Chief Judicial Magistrate, Jorhat under Section 138 of the Negotiable Instruments Act, 1881 against the accused, opposite party No. 1 herein, being C.R. (NI) Case No. 68/2017.

3. The learned Additional Chief Judicial Magistrate, Jorhat by judgment and order dated 02.02.2023 passed in said C.R. (NI) Case No. 68/2017, convicted the opposite party No. 1 under Section 138 of the NI Act and sentenced him to suffer Simple Imprisonment for 3 (three) months with

fine of Rs.2,30,000/- as the total cheque amount of Rs.2,00,000/- paid by the opposite party No. 1 to the applicant got bounced and remained unpaid for more than five years.

4. Against the said judgment and order of conviction and sentence dated 02.02.2023 passed by the learned Additional Chief Judicial Magistrate, Jorhat, the opposite party No. 1 preferred an appeal before the learned Sessions Judge, Jorhat being Crl. App. No. 6/2023. After hearing the parties, the learned Additional Sessions Judge, Jorhat by its judgment dated 26.07.2023 dismissed the said appeal of the opposite party No. 1 and upheld the judgment and order of conviction and sentence dated 02.02.2023 passed by the learned Additional Chief Judicial Magistrate, Jorhat in C.R. (NI) Case No. 68/2017 directing the opposite party No. 1/appellant to surrender before the learned Trial Court, i.e., Additional CJM, Jorhat, within a period of 30 (thirty) days from the date of the said order so as to serve out the sentence.

5. Against the said judgment and order dated 26.07.2023 passed by the learned Additional Sessions Judge, Jorhat, the opposite party No. 1 preferred the connected criminal revision petition being Crl. Rev. P. No. 530/2023 along with an Interlocutory Application being I.A. (Crl.) No. 1204/2023 praying for suspension of said judgment and order of conviction and sentence dated 02.02.2023 passed by the learned Additional Chief Judicial Magistrate, Jorhat in C.R. (NI) Case No. 68/2017 and also to stay the operation of the judgment and order dated 26.07.2023 passed by the Additional Sessions Judge, Jorhat in Crl. App. No. 6/2023 and further to grant him bail recalling the non-bailable warrant arrest issued against him by the learned Additional Chief Judicial Magistrate, Jorhat in said C.R. (NI) Case No. 68/2017.

6. The Court by order dated 14.12.2023 admitted the said Crl. Rev. P. No. 530/2023 preferred by the opposite party No. 1. By another order passed on the same date, i.e., on 14.12.2023, the Court in said I.A. (Crl.) No. 1204/2023 of the opposite party No. 1 directed that on depositing of the 50% of the cheque amount by the opposite party No. 1 with the Registry of this Court within a period of 6 (six) weeks from the date of the said order, i.e., dated 14.12.2023, the judgment and order dated 26.07.2023 passed by the learned Additional Sessions Judge, Jorhat in Crl. App. No. 6/2023 arising out of C.R. (NI) Case No. 68/2017 shall remain stayed till disposal of the said Crl. Rev. P. No. 530/2023.

7. In pursuance of the said order dated 14.12.2023 passed by a Co-ordinate Bench of this Court in I.A. (Crl.) No. 1204/2023 in Crl. Rev. P. No. 530/2023, the opposite party No. 1 on 24.01.2024 deposited a demand draft bearing DD No. 008236 dated 23.01.2024 amounting to Rs. 1,00,000/-

(Rupees One Lakh) drawn on the Assam Co-operative Apex Bank Limited, Jorhat Branch with the Registrar General of this Court stating that as the bank account of the opposite party No. 1 is blocked, he deposited the said amount by way of demand draft from the account of his brother, one Mustafa Ahmed.

8. Now the applicant, i.e., complainant of said C.R. (NI) Case No. 68/2017 has filed this application, enabling him to withdraw the said amount of Rs.1,00,000/- (Rupees One Lakh) as deposited by the opposite party No. 1 with the Registry of this Court in terms of the said order dated 14.12.2023.

9. Considering the above, on filing an appropriate application before the Registrar General of the Gauhati High Court at Guwahati by the applicant for release of the said amount of Rs. 1,00,000/- (Rupees One Lakh) deposited by the opposite party No. 1 in pursuance of the order dated 14.12.2023 passed by the Court in I.A. (Crl.) No. 1204/2023 in Crl. Rev. P. No. 530/2023, the said amount shall be paid to the applicant by the said authority through an account payee cheque, on being duly identified by his counsel.

10. However, it is made clear that such release of Rs.1,00,000/- (Rupees One Lakh) to the applicant that was deposited by the opposite party No. 1 with the Registry of this Court pursuant to the order dated 14.12.2023 passed in I.A. (Crl.) No. 1204/2023 in Crl. Rev. P. No. 530/2023 shall be subject to the outcome of said Crl. Rev. P. No. 530/2023, presently pending for adjudication.

11. With the above observation and direction, this Interlocutory Application stands disposed of.

JUDGE

Comparing Assistant