

GAHC010161492011



2024:GAU-AS:10979

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

Case No. : Crl.Rev.P./335/2011

DAFFODILS INSURANCE AGENCY
PRIVATE LTD. REP. BY ITS MANAGING DIRECTOR- MR. ABU SADEQUE
ISHTIGUE AHMED CHOUDHURY, G.S. ROAD, GHY, DIST. KAMRUP,
ASSAM.

VERSUS

THE EDITOR, DAINIK SAMOYIK PRASANGHA and ANR
DAINIK SAMOYIK PRASANGHA, MALUGRAM, SILCHAR- 788001 DIST.
CACHAR, ASSAM.

2:THE STATE OF ASSA

Advocate for the Petitioner : MR.B CHOUDHURY, MR.R K JAIN,MS.A DAS,MR.S DAS,MR. S
BISWAS,MR.A UDDIN

Advocate for the Respondent : ,,,MRSS DEY,MR.B K SEN,PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

11.11.2024

1. None appears for the petitioner on call. However, Mr. B. K. Sen, learned counsel is present representing the respondent.

2. The present application under Section 397/401 read with Section 482 of the Code of Criminal Procedure, 1973 is filed assailing the judgment and order dated 16.06.2011 passed by the learned Sub Divisional Judicial Magistrate(S) No. I, Kamrup, Guwahati in C.R. Case No. 3156/2009, dismissing the complaint case and acquitting the accused i.e. the respondent herein, the Editor, Dainik Samoyik Prasangha, a daily newspaper published from the District of Silchar, Cachar.
3. The impugned order reflects that the complaint case was fixed on 28.12.2010 for adducing evidence by the complainant, however, on that date, none represented the complainant nor the complainant was present in the Court. Accordingly, matter was fixed on 04.02.2011. On that date i.e. on 04.02.2011, the complainant was absent with steps and on that date. Though, the complainant was earlier directed to take steps to bring his witness, however, no witness was also brought on 04.02.2011. Accordingly, the matter was again fixed on 17.03.2011 for evidence of the complainant and on that date also, the complainant was absent without steps, matter was adjourned and was fixed on 29.04.2011 and on that date, a submission was made by the learned counsel for the complainant that the complainant was sick. On that date i.e. on 29.04.2011, the learned Magistrate directed the complainant to appear before the Court on 16.06.2011 and he was also asked to take steps to bring the witness on the said date. However, on 16.06.2011, not only the complainant was absent but did not also bring any witnesses. The learned counsel for the complainant though filed a hazira, however, went away without placing anything on behalf of the complainant.
4. In view of the aforesaid conduct on the part of the complainant, the learned Magistrate by the impugned order dated 16.06.2011, declined to adjourn the case further and the case was dismissed and accused were acquitted.
5. The object of revisional power of this Court under Section 397 Cr.P.C. is to set

right a patent defect or an error of jurisdiction or law. Such power can be exercised where the decision under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. It is equally well settled that a revisional jurisdiction of High Court should not be exercised in a routine manner. The Hon'ble Apex Court in **Chandra Babu vs State** reported in **2015 (8) SCC 774** held that normally revisional jurisdiction should be exercised in a question of law however, when factual appreciation is involved, then it must find place in the class of cases resulting in a perverse finding. The Supreme Court went to say that the power is required to be exercised so that justice is done and there is no abuse of power by the Court.

6. The aforesaid facts which are on record in the considered opinion of this case do not disclose commission of any jurisdictional error by the learned Magistrate or any action on the part of the learned Magistrate which is suggestive of exercise of jurisdiction in excess. It cannot also be said in the given facts of the present case that the learned Magistrate has committed any material illegality. This Court is in agreement with the findings recorded by the court below which are based on sound reasoning. In the considered opinion of this Court and as discussed herein above, the learned Court below has duly appreciated the conduct of the complainant and dismiss the complaint inasmuch as for the conduct of the complainant the accused cannot be allowed to face a prolonged trial. This Court has not found anything as regards patent defect of jurisdiction or of law. In the considered opinion of this Court, the learned Magistrate was left with no option but to dismiss the complaint, in view of the continuous failure on the part of the complainant to prosecute his case and to bring witnesses. Therefore, this Court is not inclined to interfere with the aforesaid order date 16.06.2011 passed by the learned Sub Divisional Judicial Magistrate(S) No. I, Kamrup, Guwahati in C.R. Case No. 3156/2009 in exercise of this Court's revisional power.

7. Accordingly, this Criminal Revision Petition stands dismissed.
8. LCR be returned back.

JUDGE

Comparing Assistant