

GAHC010140512024



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

Case No. : I.A.(Crl.)/731/2024

JITUMONI DAS
S/O LATE KESHAB CH. DAS
R/O VILL.-GANDHINAGAR
P.S. AND DIST.-BARPETA
ASSAM.

VERSUS

THE STATE OF ASSAM AND ANR.
REP. BY THE P.P.
ASSAM.

2:HEMEN DAS
S/O LATE SANKAR CHARAN DAS
R/O VILL.-GANDHINAGAR
P.S. AND DIST.-BARPETA
ASSAM.

Advocate for : MR K THAKUR
Advocate for : appearing for THE STATE OF ASSAM AND ANR.

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

O R D E R

16.08.2024

Heard Mr. K. Thakur, learned counsel for the applicant/petitioner and Mr. K. Baishya, learned Additional Public Prosecutor, Assam appearing for the opposite party No.1. Also heard Ms. S. Yesmin, learned counsel appearing for the

opposite party No.2.

2. In a proceeding under Section 138 of N.I. Act, 1881, the learned Judicial Magistrate 1st Class, Barpeta in N.I. Case No.216/2022, vide judgment and order dated 17.07.2023 convicted the applicant/petitioner under Section 138 of N.I. Act and sentenced him to undergo Simple Imprisonment for a period of 06(six) months and further directed him to pay a compensation of Rs.8,00,000/- (rupees eight lacs) to the complainant i.e. the opposite party No.2 herein, in default of payment of fine, to undergo Simple Imprisonment for a further period of 02(two) months.

3. Being aggrieved with the said sentence and order dated 14.07.2023 of learned Judicial Magistrate 1st Class, Barpeta, the applicant/petitioner preferred an appeal before the learned Sessions Judge, Barpeta, which was registered as Criminal Appeal No.27/2023.

4. The learned Additional Sessions Judge (FTC), Barpeta, by judgment dated 18.12.2023, dismissed the said Criminal Appeal No.27/2023 preferred by the applicant/petitioner by upholding the order dated 14.07.2023 passed by the learned Judicial Magistrate 1st Class, Barpeta in N.I. Case No.216/2022 and directed the petitioner to deposit the compensation amount within 30(thirty) days to the complainant/opposite party No.2 and to surrender before the court of learned Judicial Magistrate 1st Class, Barpeta to serve out the sentence within a period of 30(thirty) days.

5. Aggrieved with the said judgment of the learned Additional Sessions Judge (FTC), Barpeta passed in Criminal Appeal No.27/2023, the applicant/petitioner preferred the connected revision petition being Criminal Revision Petition No.305/2024.

6. Though by the judgment and order dated 18.12.2023, the learned

appellate Court dismissed the Criminal Appeal No.27/2023 preferred by the applicant/petitioner directing him to surrender before the court of learned Judicial Magistrate 1st Class, Barpeta in N.I. Case No.216/2022 within 30(thirty) days, but he did not surrender and as such, the learned Judicial Magistrate 1st Class, Barpeta by order dated 01.03.2024 passed in said N.I. Case No.216/2022, issued Non-Bailable Warrant of Arrest against the applicant/petitioner/ convict.

7. It is submitted by the applicant/petitioner that after the order of the Court dated 05.08.2024 passed in IA(CrI) 636/2024, the order of Non-Bailable Warrant of Arrest issued by the learned Judicial Magistrate 1st Class, Barpeta in said N.I. Case No.216/2022 was recalled and the next date for appearance of the petitioner is fixed on 19.08.2024.

8. It is placed by the applicant/petitioner that in the meanwhile, out of the amount of compensation of Rs. 8,00,000/- (rupees eight lacs), he has paid Rs.5,00,000/- (rupees five lacs) in cash and Rs. 3,00,000/- (rupees three lacs) through cheque vide No.000004 dated 30.08.2024 drawn at H.D.F.C Bank, Barpeta branch and paid it to the opposite party No.2/complainant on 29.07.2024, which the opposite party No.2/complainant duly received on 29.07.2024.

9. To that extent, Ms. S. Yesmin, learned counsel appearing for the opposite party No.2 has also accepted the same.

10. It is further stated by the stated by the petitioner that the said cheque amount of Rs.3,00,000/- (rupees three lacs) dated 30.08.2024, noted above, paid to the opposite party No.2 was issued by the wife of the petitioner, who had given an undertaking that if the cheque amount could not be paid, then she will be liable to pay Rs.3,00,000/- (rupees three lacs) in cash on 30.08.2024 to the opposite party No.2/complainant.

11. However, both the learned counsel for the applicant/ petitioner and the opposite party No.2 Mr. K. Thakur and Ms. S. Yesmin, respectively, submit that the opposite party No.2 received a cash amount of Rs.3,00,000/- (rupees three lacs) from the petitioner in lieu of the said cheque No.000004 dated 30.08.2024 drawn at HDFC Bank, Barpeta branch issued by Tinkul Das, wife of the petitioner. On instruction, Ms. S. Yesmin, learned counsel for the respondent No.2 stated that the entire compensation amount of Rs.8,00,000/- (rupees eight lacs) has been received by the said respondent No.2 from the petitioner in terms of the order of the learned Judicial Magistrate First Class, Barpeta dated 14.07.2023 passed in N.I. Case No.216/2022.

12. Until further order(s) of the Court, the impugned judgment and order dated 14.07.2023 passed by the learned Judicial Magistrate 1st Class, Barpeta in N.I. Case No.216/2022 as well as the Judgment and order dated 18.12.2023 passed by the learned Additional Sessions Judge (FTC), Barpeta in Criminal Appeal No.27/2023 will remain suspended.

13. However, the applicant/petitioner/convict shall appear before the Court of learned Judicial Magistrate 1st Class, Barpeta on 19.08.2024, as ordered earlier by the said Magistrate.

14. With the above observation and directions, this interlocutory application stands disposed off.

JUDGE

Comparing Assistant