

GAHC010187662024



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

Case No. : Crl.Pet./1120/2024

AFRINA BEGUM
W/O RUMEL HUSSAIN
R/O HOUSE NO. 4, GANDHIBASTI,
SOUTH SARANIA, NAMADA PATH,
P.O. SILPUKHURI, P.S. CHANDMARI, DIST. KAMRUP (), ASSAM, PIN-781003

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY THE PP, ASSAM

2:MD. MUSLIM
S/O LATE FARZAN
R/O FLAT NO. 1
RITURAJ APARTMENTS
SOUTH SARANIA
P.O.ULUBARI

P.S. PALTAN BAZAR
GUWAHATI-07

DIST. KAMRUP (M)
ASSA

Advocate for the Petitioner : MR M A ISLAM, MR J I MONDAL

Advocate for the Respondent : PP, ASSAM,

**BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND**

ORDER

Date : 24-09-2024

Heard learned counsel Mr. M.A. Islam for the petitioner Smt. Afrina Begum, who has filed this application under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 challenging the impugned order dated 24.07.2024 passed by the learned Judicial Magistrate First Class, Kamrup (Metro), Guwahati in connection with C.R. Case No. 2261/2021.

2. It is submitted that the petitioner is apprehending that she will be arrested and forwarded to custody as distress warrant has been issued against her. The relevant part of the impugned order dated 24.07.2024 of the learned trial Court is reflected herein below verbatim:

“The learned defence counsel has submitted that the accused has preferred a criminal petition before the Hon'ble Gauhati High Court challenging the order of interim compensation dated 17.03.2023 passed by this court and the said criminal petition is pending for disposal. He further submitted that the accused person has no properties in her name for initiating proceeding under sec 421 of CrPC, so he has prayed for deferring the proceeding against her.

The learned counsel for the complainant has submitted that Hon'ble Gauhati High Court has not yet passed any stay order against the interim compensation amount. So, he has prayed for issuance of warrant u/s 421 of CrPC against the accused person for recovery of the interim compensation amount of Rs.62,500/-.

Upon perusal of the case record it transpires that vide order dated 17.03.2023 my learned predecessor was pleased to direct the accused to pay 10% of the cheque amount i.e. Rs. 62,500/- as interim compensation to the complainant. But the accused did not pay the compensation amount even after the order of this court. So, the complainant had filed a petition vide petition no. 1095/23, for initiating proceeding under sec-421 CrPC for the recovery of interim compensation from the accused person. Accordingly, vide order dated 27.12.2023, a notice was issued to the accused person to show cause why proceeding u/s 421 CrPC should not be initiated against her and on 12.06.2024, the accused person has submitted reply to the show cause notice praying for deferring the process of sec-421 CrPC, stating that she is poor lady without any properties in her name for the purpose of drawal of proceeding U/S 421 CrPC.

Considering the above facts and circumstances of the case, it appears that even after

order of this court the accused person wilfully did not paid the interim compensation amount of Rs.62,500/- to the complainant. Further, it also transpires that Hon'ble Gauhati High Court has not yet pass any stay order against the order dated 17.03.2023, passed by this court.

Hence, this court is of the opinion that this is a fit case to issue warrant u/s 421 of CrPC against the accused person for levying the interim compensation amount of Rs. 62,500/- (Sixty-Two Thousand Five Hundred) only.

Accordingly issue distress warrant u/s 421 of CrPC against the accused person.”

3. This accused is the petitioner before this Court Smt. Afrina Begum. The petitioner is now apprehending that she will be taken into custody as she has no property and she has no resource to pay Rs.62,500/- (Rupees Sixty Two Thousand Five Hundred).

4. Heard Ms. N. Das, learned Additional Public Prosecutor, Assam for the respondent State.

5. Learned counsel for the petitioner has relied on the decision of this Court in *Hazi Abdul Khaleque vs. Mustt. Samsun Nehar reported in (990) 2 GLR 328* wherein it has been observed that :

“12. Section 421 of the Code provides for recovery of fine and the procedure laid down for the purpose was by issue warrant for attachment and sale of any movable property belonging to offender, in this case the present petitioner (opposite party in the maintenance proceeding) or issue of warrant to the Collector of the District, authorizing him to realize the amount as arrears of land revenue from the movable or immovable property, or both, of the defaulter. The proviso to Section 421 clearly stipulates that “no such warrant shall be executed by the arrest or detention in prison of the offender.”

13. On consideration of the above provisions, there should be no doubt that for recovery of money as maintenance which has to be in accordance with the procedure for recovery of fine no warrant of arrest or detention of the petitioner could have been ordered. I, therefore think that the impugned order dated 1-9-89 was clearly erroneous and has to be set aside.”

6. I have considered the submissions at the bar.

7. Reverting back to this case, the apprehension of the petitioner is not justified. NBWA has not been issued against her. Distress warrant has been

issued against her. As the language of the Court reflects that distress warrant is issued against the petitioner, the petitioner is apprehending that she will be taken into custody which is a preempted apprehension. The language of the order clearly reflects that distress warrant is issued under Section 421 of CrPC which clearly implies that distress warrant has been issued as per the provisions of Section 421 of CrPC and not de hors the provisions.

8. At this juncture, there appears to be no apprehension that the petitioner will be forwarded to custody on the strength of distress warrant. Hence, I deem it fit to dismiss the petition as the petition is devoid of merits.

9. In terms of the above observation, this Criminal Petition stands disposed of.

JUDGE

Comparing Assistant