

GAHC010225122014



2024:GAU-AS:11794

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

Case No. : Crl.Pet./209/2014

MISS GITA KAR
D/O LT. S C KAR R/O VILL- LOWAR HAFLONG NEAR SONI MANDIR, P.S.
HAFLONG, DIST. N C HILLA DIMA HASAO, ASSAM.

VERSUS

THE STATE OF ASSAM AND ANR

2:LITON GUHA ROY
S/O LT. MONTU GUHA ROY @ LT. SUSHIL KUMAR GUHA ROY
R/O VILL- LOWER HAFLONG
NEAR SONI MANDIR
P.S. HAFLONG
DIST. N C HILLA MIMA HASAO
ASSAM

Advocate for the Petitioner : MS.A SHARMA, MS. B SARMA (AMICUS CURIAE),MS.B
BARUAH,MR.A K BORA

Advocate for the Respondent : PP, ASSAM, MR.J DAS,MR.A DAS,MR.S K MEDHI

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

Date : 28-11-2024

1. Heard Ms. B Sarma, learned counsel for the petitioner. Also heard Mr. B Sarma, learned Addl. PP, appearing for the respondent

No.1.

2. The present application is filed under section 482 Cr.P.C read with sections 397/401 Cr.P.C assailing an order dated 25.09.2013, passed in GR Case No.97/2007, whereby the learned Magistrate found the respondent No.2 guilty of commission of offence under sections 341/323/354 IPC for the reason that he had pleaded guilty.

3. The petitioner is aggrieved by such determination and it is her case that even if guilty is pleaded, a person cannot be released only on payment of fine when it relates to conviction under section 354 IPC inasmuch as the minimum prescription of sentence prescribed is one year.

4. It is seen that the respondent No.2 had unequivocally pleaded guilty of outraging modesty of the present petitioner. However, none appears for the respondent No.2 to defend. Accordingly, Mr. Mahajan, learned counsel is requested to argue this case on behalf of the respondent No.2.

5. The fundamental ground raised in this petition is that the decision of the learned court below in sentencing/imposing punishment under section 354 IPC is without authority of law and without jurisdiction inasmuch as such provision prescribes sentence not less than one year, however, the learned trial court has sentenced the respondent No.2 imposing a fine of Rs.200 only.

6. Ms. B Sarma learned Amicus Curiae submits that the offence was admittedly committed on 19.05.2007 and at the relevant point of time, the prescribed punishment for commission of offence under section 354 IPC was imprisonment for a term which may extend to

two years, or with fine, or with both and therefore, it cannot be said that the learned court was without jurisdiction to impose and sentence of payment of fine only.

7. Mr. Mahajan learned counsel for the respondent No.2 also submits that it cannot be said that the learned trial court has committed any error of law warranting exercise of power under section 482 Cr.P.C. It is his contention that punishment prescribed under IPC being a substantive law, the amended punishment cannot be inflicted upon the accused on the date of conviction and sentence and the conviction and sentence must relate back to the provisions of substantive law which was available at the time of the conviction.

8. This court is also in total agreement with the aforesaid arguments of the parties, inasmuch as until and unless a law is expressly declared or by implication, it is made to be retrospective, there is always a presumption that law enacted is prospective. When the offence was committed, the prescription of punishment under section 354 IPC was either maximum two years of sentence or fine or both. Such prescription was amended by Amendment Act, 2013 w.e.f. 03.02.2013, whereby the punishment for commission of offence under section 354 IPC was prescribed to be not less than one year and which may extend to five years and also fine. Thus, the earlier i.e., pre-amended provision prescribed of three situations, either punishment which may extend to maximum of two years of imprisonment or imposition of fine or both, however, by way of the amendment a minimum punishment is being prescribed and imposition of fine.

9. In the considered opinion of this court such prescription of punishment, post amendment cannot be made applicable in the given facts of the present case, when such amendment admittedly is prospective and was made effective from 03.02.2013 and the offence was committed on 19.05.2007.

10. That being the position, this court puts on record did not find any infirmity or error of law in the impugned order. Accordingly the same stands closed.

11. While parting with the record, this court puts on record its appreciation as regards the able assistance rendered by Ms. B Sarma and Mr. N Mahajan, learned counsel as Amicus Curiae. Accordingly registry shall ensure that both the learned counsel be paid the legal fee, as payable to a Legal Aid Counsel as per the norms fixed by the Legal Services Authority.

JUDGE

Comparing Assistant