

GAHC010226592024



2024:GAU-AS:12894

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

**Case No. : Crl.Pet./1307/2024**

ABHIJIT BANIA  
S/O LATE DULU BANIA  
R/O VILL- BHUKTABARI  
P.S. SIPAJHAR  
DIST. DARRANG, ASSAM

VERSUS

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

2:MERAJUL HOQUE  
S/O LATE AJIJUR RAHMAN  
VILL- SATKHALI  
P.S. SIPAJHAR DIST. DARRANG  
ASSAM  
(INFORMANT)

**Advocate for the Petitioner** : MR. B HALDAR, MS S. BASAK, R L CHUTIA

**Advocate for the Respondent** : PP, ASSAM,

**BEFORE**  
**HONOURABLE MRS. JUSTICE MITALI THAKURIA**

**ORDER**

**Date : 18.12.2024**

Heard Mr. B. Haldar, learned counsel for the petitioner. Also heard Mr. R. J.

Baruah, learned Additional Public Prosecutor for the State respondent No. 1.

**2.** This is an application under Section 528 of BNSS, 2023 against the impugned order dated 02.08.2024, passed by the learned Additional Session Judge (FTC), Darrang, Mangaldai in Criminal Appeal No. 09/2023, dismissing the appeal preferred by the petitioner for non-prosecution.

**3.** It is submitted by Mr. Haldar, learned counsel for the petitioner, that the appeal was fixed for final hearing before the Court of learned Additional Session Judge (FTC), Darrang, Mangaldai on 02.08.2024, but the same was dismissed for non-prosecution under the provision of Order 41 Rule 17 CPC. However, it is submitted that on the said date, though the counsel for the appellant did not appear physically in the Court when the matter was called for hearing, but he had filed Hazira representing the appellant. He further submitted that there cannot be any dismissal of a criminal appeal if it is already admitted for hearing and that too when the appellant was represented through his engaged counsel by filing Hazira, though at the time when the matter was called for hearing the counsel for the appellant was not physically present before the Court. Accordingly, he submitted that the order of dismissal dated 02.08.2024 may be set aside and quashed by allowing a chance to the present petitioner/appellant to contest the case and to argue the matter accordingly.

**4.** Mr. Baruah, learned Additional Public Prosecutor, submitted in this regard that a criminal appeal cannot be dismissed for non-prosecution if it is already admitted for hearing.

**5.** After hearing the submissions made by the learned counsels for both sides, I have perused the impugned order dated 02.08.2024, passed by the learned Additional Session Judge (FTC), Darrang, Mangaldai and it is found that admittedly the appeal was dismissed only for non-prosecution as the counsel for the appellant was not physically present before the Court when the case was called for, though the appellant was duly represented by his engaged counsel by filing Hazira. More so, it is seen that the appeal was dismissed under the provision of Order 41 Rule 17 CPC, which is not at all applicable in the case of criminal appeal and from the order itself, it reflects that the appeal was already admitted for hearing and on 02.08.2024, the case was fixed for final hearing.

**6.** In view of above, I find that the order dated 02.08.2024, passed by the learned Additional Session Judge (FTC), Darrang, Mangaldai is illegal and not tenable and accordingly the same stands set aside. The learned Additional Session Judge (FTC), Darrang, Mangaldai is accordingly directed to hear the appeal in presence of both the appellant and the respondent by fixing a date for hearing intimating both the parties.

**7.** With the above observation and direction, the criminal petition stands disposed of.

**JUDGE**

**Comparing Assistant**