GAHC010243132024

2024:GAU-AS:12379

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

Case No. : Crl.Pet./1419/2024

SURESH AGARWAL
S/O LATE BOHITRAM AGARWAL
R/O M.D. AGARWALLA ROAD,
HIJUGURI, P.O. HIJUGURI
P.S. TINSUKIA,
DIST. TINSUKIA, ASSAM

VERSUS

BHANJANLAL SHARMA
S/O LATE SHIV PRATAP SHARMA
GNB ROAD,
TINSUKIA, P.O. TINSUKIA
DIST. TINSUKIA, ASSAM

Advocate for the Petitioner : MR. T R SARMA,

Advocate for the Respondent : ,

BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA

ORDER

Date : 06.12.2024

Heard Mr. T. R. Sarma, learned counsel for the petitioner.

2. This is an application under Section 528 of the BNSS, 2023 praying for setting aside and quashing the order dated 18.10.2024, passed by the learned Additional Sessions Judge cum Special Judge, POCSO, Tinsukia in Crl. Appeal No. 23(3)/2024, whereby the petitioner was directed to pay 20% of the fine amount.

3. However, vide additional affidavit, the petitioner has also prayed for setting aside the impugned order dated 18.11.2024, passed by the learned Additional Sessions Judge cum Special Judge, POCSO, Tinsukia in Crl. Appeal No. 23(3)/2024, which has been passed during the pendency of the present criminal petition.

4. It is submitted by Mr. Sarma, learned counsel for the petitioner, that vide order dated 23.07.2024, the learned Additional Sessions Judge cum Special Judge, POCSO stayed the operation of impugned judgment and order dated 24.06.2024, passed by the learned Chief Judicial Magistrate, Tinsukia, whereby the petitioner was convicted under Section 138 of N.I. Act and sentenced to undergo R.I. for 6 (six) months and to pay compensation of Rs. 12 Lakhs in default to undergo R.I. for another 6 (six) months, and also defer the payment

of 20% of the fine amount till disposal of the appeal, being Criminal Appeal Case No. 23(3)/2024. But on 2 (two) subsequent dates, i.e. on 28.08.2024 & 18.09.2024, the matter was adjourned considering the prayer of the petitioner and it was accordingly fixed on 18.10.2024, whereby the learned Appellate Court had passed the order asking the petitioner to make payment of 20% of the fine amount with an observation that in default the order of stay will be vacated. Accordingly, the present petition has been filed challenging the said impugned order dated 18.10.2024, passed by the learned Additional Sessions Judge cum Special Judge, POCSO, Tinsukia in Crl. Appeal No. 23(3)/2024. But, during the pendency of the present petition, the learned Appellate Court had passed the order dated 18.11.2024, whereby the order of stay is vacated and the copy was sent to Court of learned Chief Judicial Magistrate, Tinsukia for information and necessary action and on the basis of which, the NBWA had already been issued against the present petitioner.

5. Mr. Sarma, learned counsel for the petitioner, further submitted that the petitioner could not pay the 20% of the fine amount due to his various illness and also for the illness of his wife, who is suffering from cancer. But he is now ready and willing to pay 20% of the fine amount if some time is granted to him and accordingly he prayed for setting aside and quashing the orders dated 18.10.2024 & 18.11.2024, passed by the learned Appellate Court whereby the order of stay was vacated.

6. Considering the submissions made by the learned counsel for the petitioner and also considering the fact that the petitioner is still ready and willing to pay 20% of the fine amount, this Court is of the opinion that one

more chance may be given to the present petitioner to pay 20% of the fine amount before the learned Appellate Court.

7. Accordingly, the petitioner is hereby directed to appear before the learned Additional Sessions Judge cum Special Judge, POCSO, Tinsukia and to make payment of 20% of the fine amount on or before the next date of listing, i.e. 11.12.2024, and till then, NBWA issued by the learned Trial Court shall remain stayed/suspended. Consequently, the impugned orders dated 18.10.2024 & 18.11.2024, passed by the learned Additional Sessions Judge cum Special Judge, POCSO, Tinsukia in Crl. Appeal No. 23(3)/2024, stands set aside and quashed.

8. In terms of above, this criminal petition stands disposed of.

JUDGE

Comparing Assistant