

THE HIGH COURT OF TRIPURA
AGARTALA

Crl. Rev. P. No. 11 of 2012

Sri Niranjana Chakraborty
Son of late Sachindra Chakraborty,
Vill: Boulapassa, P.O. & P.S. Kailashahar

.....Petitioner

- VERSUS -

The State of Tripura.

.....Respondent.

B E F O R E
THE HON'BLE MR. JUSTICE U. B. SAHA

For the petitioner	: Mr. B. Banerji, Advocate.
For the State respondent	: Mr. A. Ghosh, P.P.
Date of hearing & delivery of judgment and order	: 18.11.2015
Whether fit for reporting	: NO.

Judgment and Order (Oral)

This revision petition is directed against the judgment and order dated 17.01.2012 passed in Criminal Appeal No. 14(4) of 2011, whereby and whereunder the learned Sessions Judge, North Tripura, Kailashahar set aside the order of conviction under Sections 448/332 of the IPC passed by the learned Judicial Magistrate, 1st Class, Kailashahar, North Tripura and convicted the convict petitioner under Section 323 of the IPC and sentenced to suffer RI for 2 months and a fine of Rs. 500/- in default to suffer 10 days SI for commission of offence under Section 323 of the IPC.

[2] Heard Mr. B. Banerji, learned counsel appearing for the convict petitioner as well as Mr. A. Ghosh, learned P.P. appearing for the State respondent.

[3] Prosecution case, in short, is that on 05.06.2009 the convict petitioner, namely, Niranjana Chakraborty, a Government contractor entered into the office chamber of Prithwish Das, Jr. Engineer and enquired about the finalization of the bill. The convict petitioner insisted for such finalization of bill and the Jr. Engineer replied that it could not be finalized without approval of his higher authorities. The convict petitioner then attacked Prithwish Das and assaulted him by fist blows. Prithwish Das received bleeding injury by such attack.

[4] Thereafter, Prithwish Das has submitted a compliant to O/c, Kumarghat P.S. and on the basis of the said compliant a police case was registered, vide Kumarghat P.S. Case No. 42 of 2009 under Sections 448/333/506 of the IPC, investigation was conducted and after completion of investigation, charge sheet was submitted under Sections 448/333/506 of the IPC.

[5] Cognizance of offence was taken under Sections 448/332/506 of the IPC and after recording the evidence and conclusion of the trial, the learned Judicial Magistrate came to the findings that the convict petitioner committed

offence punishable under Sections 332/448 of IPC. But for commission of offence under Section 332 of IPC, learned Magistrate sentenced the convict petitioner to suffer RI for two years and a fine of Rs. 5000/- in default to suffer further SI for 5 months. Learned Magistrate also sentenced the convict petitioner to suffer RI for 6 months and a fine of Rs. 1000/-in default to suffer SI for another one month for commission of offence punishable under Section 448 of IPC.

[6] Being aggrieved and dissatisfied with the impugned order of conviction and sentence passed by the learned Judicial Magistrate, the convict petitioner preferred an appeal being Crl.A. No. 14(4) of 2011 before the learned Sessions Judge.

[7] The learned Sessions Judge, taking note of all the evidence on record as well as the law prescribed by the Supreme Court relating to Sections 332/448 of IPC finally set aside the order of conviction under Sections 332/448 of the IPC passed by the learned Judicial Magistrate, 1st Class, Kailashahar, North Tripura i.e. the Trial Court and convicted the convict petitioner under Section 323 of the IPC and sentenced to suffer 2 months RI and fine of Rs. 5,00/- in default to suffer 10 days SI.

[8] Being aggrieved by the order dated 17.01.2012 passed by the learned Sessions Judge, in Crl. A. No. 14(4)

of 2011, the convict petitioner preferred the instant revision petition.

[9] Mr. Banerji, learned counsel appearing for the convict petitioner submits that he is not challenging the order of conviction under Section 323 of the IPC but praying for modifying the order of sentence to the extent of a fine instead of RI for 2 months.

[10] Mr. Ghosh, learned P.P. appearing for the State respondent submits that the alleged offence was committed in the year 2009 and till date the matter is continuing. By this time 7 years has already elapsed. Thus, he has no objection if the conviction is upheld and the sentence is modified to the extent of a fine instead of imprisonment as ordered by the learned Appellate Court.

[11] This Court has gone through the evidence of PW-2, Sri Bhanuram Malakar, who saw the convict petitioner to enter into the chamber of Prithwish Das and also heard hue and cry. He saw the convict petitioner beating Prithwish Das and Dayamay Datta was trying to stop it. PW-3, Sri Chayan Das, saw injury on Prithwish Das. He has also heard the occurrence from Prithwish Das. PW-4, Biral Debbarma also came to learn that contractor, Niranjana Chakraborty assaulted Prithwish Das.

[12] After going through the evidence on record, this Court is of the considered opinion that the learned Appellate Court did not commit any wrong while convicting the convict petitioner under Section 323 of the IPC. However, as per Section 323 of the IPC "for voluntarily causing hurt shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extent to one thousand rupees, or with both"

[13] Considering the nature of offence and circumstances under which the offence was committed and also considering the age of the convict petitioner who is at present 63 years old, it would be proper not to send him in jail after elapsed of 7 years from the date of commission of offence. Rather it would meet justice if the sentence is modified to the extent of fine of Rs. 1000/- instead of sentence to suffer 2 months RI.

[14] Accordingly, the conviction of the petitioner under Section 323 of IPC passed by the Appellate Court is upheld and the sentence is modified to pay a fine of Rs. 1000/- in default to suffer 1 month's SI for commission of offence under Section 332 of the IPC. Fine money shall be deposited with the trial court within a period of 1(one) month from today. If the convict petitioner fails to deposit the aforesaid fine money within 1(one) month, then the

trial court shall take all necessary steps for suffering the sentence by the convict petitioner as indicated above.

[15] With the aforesaid order the instant revision petitioner is partly allowed. Copy of this order be furnished to Mr. Banerji, learned counsel appearing for the convict petitioner. As the convict petitioner is on bail, his bail bond will be discharged after deposition of the fine money with the trial court.

[16] Send down the LCRs forthwith.

JUDGE

A.Ghosh.