HIGH COURT OF TRIPURA
AGARTALA

Crl. L. P. No.15 of 2024
in Crl. A. No.23 of 2024

Mamud Hossen Khadim

-----Petitioner(s)

Versus

Sri Uttam Sarkar & Anr.

-----Respondent(s)

For Petitioner(s) : Mr. Subham Majumder, Adv.

For Respondent(s) : Mr. Raju Datta, P.P.

HON'BLE MR. JUSTICE BISWAJIT PALIT

Order

10/02/2025

Learned Counsel, Mr. Subham Majumder is present for the petitioner-appellant. Learned P.P., Mr. Raju Datta is present for the State-respondent. Today also none appeared on behalf of private-respondent No.1, Sri Uttam Sarkar.

From the record it appears that as per order of the Court notice upon private-respondent has been duly served through 'Dasti' service and accordingly, an affidavit has been sworn in this regard. The petitioner-appellant has challenged the order dated 05.07.2024 passed by Learned J.M. 1st Class, Court No.3, Udaipur, Gomati Tripura in connection with case No.CR(NI) 54 of 2021 under Section 138 N.I. Act by way of filing appeal and along with the petition another application under Section 378(4) of Cr.P.C. is filed for granting Special Leave to Appeal to allow the appeal as required by law. Today in course of hearing, Learned Counsel for the petitioner-appellant has drawn the attention of the Court referring the said order of the Learned J.M. 1st Class, Udaipur and

submitted that the petitioner-appellant on that day could not appear before the Learned Court below and E/R of bailable warrant of arrest issued against the respondent-accused was not returned and the Learned Court below on the ground that on previous two consecutive dates the petitioner-appellant remained absent, dismissed the case for non-prosecution with a view that no purpose would be served by keeping the case alive. Hence, the petitioner-appellant has preferred this appeal before the High Court for setting aside the said order.

Learned P.P., on the other hand, fairly submitted that once the bailable warrant of arrest was issued, so, till execution of the warrant of arrest there was no scope to dismiss the case for non-prosecution, since the case was at the stage of 313 of Cr.P.C. So, Learned P.P. submitted that the order passed by Learned Court below was passed not in-accordance-with law.

I have heard both the sides and on perusal of the order, it appears that there is material for proceeding with the appeal and accordingly, the application for granting Special Leave to Appeal filed by the petitioner-appellant is hereby allowed under Section 378(4) of Cr.P.C.

Hence, Crl. L. P. No.15 of 2024 arising out of Crl. A. No.23 of 2024 is hereby allowed.

JUDGE

MOUMITA DATTA
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