

GAHC010010492015



2026:GAU-AS:2767

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

Case No. : Crl.Rev.P./87/2015

SIBO PRASAD CHOUDHURY and 5 ORS
S/O LATE SISIT KUMAR CHOUDHURY, R/O ASHOK NAGAR VILL. , P.O. and
PS. MAKUM, DIST. TINSUKIA ASSAM

2: TILESWAR GOGOI

S/O SRI KUNDAL GOGOI
R/O MAKUM PURNAGAR
P.O. and P.S. MAKUM
DIST. TINSUKIA
ASSAM.

3: RAJIB CHETIA

S/O SRI CHANDRA CHETIA
R/O VILL. DINJOYEE
P.O. and P.S. CHABUA
DIST. TINSUKIA
ASSAM.

4: JIBAN TAYE

S/O SRI DIBIRAM TAYE
R/O VILL. DHAIBARI
P.S.NITAIPUKHURI
DIST. SIVASAGAR
ASSAM.

5: TUKRESWAR CHETIA

S/O LATE SUKRESWAR CHETIA
R/OVILL. NIZ MAKUM GAON
P.O. and P.S. MARGHERITA
DIST. TINSUKI

ASSAM.

6: NILAKANTA BORA

S/O SRI MADHURAM BORA
R/OVILL. JELINGITUP
BHOAMUKH
DIST. JORHAT
ASSAM

VERSUS

BICKY KHAN and 2 ORS
S/O LATE AMIR KHAN

2:SMTI JYOTSNA BEGUM

W/O LATE AMIR KHAN
BOTH ARE R/ONO. 2
LAZUM GAON
MARGHERITA
P.O. MARGHERITA
DIST. TINSUKIA
ASSAM.

3:THE STATE OF ASSA

Advocate for the Petitioner : MR.K AGARWAL, MR.R J BARUA

Advocate for the Respondent : MR.A K DUTTAR-1 and 2, MR.B PURKAYASTHA(R-1 & 2),MR.A K BARPUJARI(R-1 & 2),MR.R P KAKOTI(R-1 & 2),PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ANJAN MONI KALITA

JUDGMENT & ORDER

Date of Hearing : 19.02.2026

Date of Judgment: 24.02.2026

Heard Mr. K. Agarwal, learned Senior Counsel assisted by Ms. P. Neog, learned counsel for the petitioners. Also heard Mr. A. K. Dutta, learned counsel appearing for the

respondent nos. 1 & 2 and Mr. K. K. Parasar, learned Addl. P.P. for the State.

2. This is an application filed under Sections 397 and 401 read with Section 482 of the Criminal Procedure Code, 1973, assailing the Judgment and Order dated 19.02.2015, passed by the learned Sessions Judge, Tinsukia, in Criminal Appeal No. 62(4)/2013, setting aside the Judgment and Order dated 27.08.2013, passed by the learned SDJM, Margherita in G.R. Case No. 206/07 and upholding the Judgment dated 30.04.2011, passed by the learned SDJM, Margherita in GR Case No. 206/07 with certain modification and thereby, sentencing them to pay a fine of Rs. 1,000/- (Rupees One Thousand) each, under Section 166/34 IPC in default of payment of fine, Simple Imprisonment for 3(three) months, under Section 166/34 IPC and sentencing them to undergo Rigorous imprisonment for 3(three) years and to pay a fine of Rs. 1,000/- (Rupees One Thousand) each, in default of payment of fine, further Rigorous Imprisonment for 1(one) month, under Section 325/34 IPC.

3. The factual matrix leading to the arising of the instant revision petition is summarized herein below: -

- (a) The respondent no. 2 (informant) lodged an FIR dated 21.04.2007, before the Officer In-charge, Margherita Police Station alleging, inter alia, that on 16.04.2007, one Shri Sibu Prasad Choudhury, ASI of Margherita Police Station along with few other constables of the said said Police Station had severely bitten up the informant's son, namely, Biki Khan, while he was enjoying Bihu at Margherita Central Field Bihutoli, whereby, the aforesaid Biki Khan got serious injuries.
- (b) On receipt of the FIR, the Officer In-charge, Margherita Police Station registered Margherita P.S. Case No. 57/2007, under Sections 325/34 of the IPC against the petitioners.
- (c) After completion of the investigation, final report vide No. 25/07 dated 01.06.2007 was filed before the SDJM, Margherita. The aforesaid SDJM, Margherita, vide order dated

07.08.2007, after recording the statement of the informant, directed the Officer In-charge of Margherita Police Station to reinvestigate the matter and submit a report. Accordingly, after reinvestigation, the police submitted charge-sheet against the petitioners under Sections 166/325 IPC.

- (d) After appearance of the petitioners before the learned SDJM, Margherita, charges were framed against the petitioners under Sections 166/325 IPC. However, during the trial, on 01.09.2009, at the stage of evidence, the learned SDJM, Margherita, altered the charge and framed charge under Sections 166/325/34 of the IPC against the petitioners.
- (e) During the trial, the prosecution examined 10(ten) witnesses and the statements of the petitioners were recorded under Section 313 Cr.P.C. After hearing the parties and considering the materials on record, the learned SDJM, Margherita, vide his Judgment dated 30.04.2011, acquitted the petitioners under Sections 325/34 IPC. However, the learned SDJM, Margherita, found the petitioners guilty under Sections 166/34 IPC and accordingly, sentenced them to pay a fine of Rs. 1,000/- each, in default 3(three) months of Simple Imprisonment under Section 166 IPC.
- (f) Being aggrieved by the aforesaid Judgment dated 30.04.2011, passed by the learned SDJM, Margherita, the petitioners preferred an appeal before the learned Sessions Judge, Tinsukia, which was registered as Criminal Appeal No. 11(2)/2011.
- (g) The learned Appellate Court, upon hearing the parties and considering the materials available on record, vide Judgment dated 01.11.2011, allowed the appeal by remanding the case for fresh adjudication. The learned Appellate Court, while passing the aforesaid judgment dated 01.11.2011, also made an observation that the Trial Court is at liberty to examine further material witness/witnesses also other than Shri Mintu Pradhan.
- (h) On such remand, the learned Trial Court issued summons to the aforesaid Mintu Pradhan to be examined under Section 311 Cr.P.C., fixing 28.12.2011. Subsequently, the aforesaid Mintu Pradhan was examined on 21.03.2012. After examination of the

aforesaid PW-11, Mintu Pradhan, the respondent no. 2 filed an application under Section 311 Cr.P.C., with a prayer to examine more witnesses in the case. The learned SDJM, vide it's order dated 18.05.2012, rejected the aforesaid prayer of the respondent no. 2 and against the aforesaid order dated 18.05.2012, the respondent no.2 preferred a revision petition before the Hon'ble Gauhati High Court. The Hon'ble Gauhati High Court, after hearing the parties and considering the materials on record, vide order dated 07.02.2013, dismissed the aforesaid criminal revision petition.

- (i) Thereafter, the learned SDJM, Margherita, upon hearing the parties, came to a conclusion that the prosecution had failed to bring home the guilt of the petitioners levelled under Section 325/166/34 of IPC and accordingly, vide Judgment and Order dated 27.08.2013, passed in GR Case No. 206/2007, acquitted all the petitioners from the charges under Section 325/166/34 IPC.
- (j) Being aggrieved by the aforesaid Judgment & Order dated 27.08.2013, acquitting the petitioners, the respondent nos. 1 & 2 preferred an appeal in the Court of learned Sessions Judge, Tinsukia, under Section 372 of Cr.P.C. The aforesaid appeal was registered and numbered as Criminal Appeal No. 62(4)/2013. The learned Sessions Judge, Tinsukia, upon hearing the parties, came to the conclusion that the Judgment dated 30.04.2011, passed by the learned SDJM, Margherita, in GR Case No. 206/2007, convicting the petitioners under Sections 166/34 IPC and having found no irregularity or illegality or infirmity in the aforesaid judgment, set aside the Judgment and Order dated 27.08.2013, passed by the learned SDJM, Margherita.
- (k) Accordingly, vide Judgment dated 19.02.2015, passed in Criminal Appeal No. 62(4)/2013, the learned Sessions Court, Tinsukia, upheld the judgment of the learned SDJM, Margherita, dated 30.04.2011 with a slight modification that the petitioners have been found guilty under Sections 166/34 IPC and they were sentenced to pay a fine of Rs. 1,000/- each, in default of payment of fine, Simple Imprisonment of 3(three) months,

under Sections 166/34 IPC. The learned Sessions Judge, Tinsukia, had also found that petitioners guilty under Sections 325/34 IPC and accordingly, the petitioners were sentenced to undergo Rigorous Imprisonment for 3(three) years and to pay a fine of Rs. 1,000/- only each, in default of payment of fine further Rigorous Imprisonment of 1(one) month.

- (1) Being aggrieved and dissatisfied with the Judgment and Order dated 19.02.2015, passed in the aforesaid Criminal Appeal No. 62(4)/2013 by the learned Sessions Judge, Tinsukia, the petitioners have filed the instant criminal revision petition.

4. Mr. K. Agarwal, learned Senior Counsel, at the very beginning submitted that though he has several grounds to argue his case on merit, he would like to argue on a procedural mistake apparently committed by the learned Sessions Judge, Tinsukia, in passing the Judgment & Order dated 19.02.2015.

5. The learned Senior Counsel submits that the learned Sessions Judge, Tinsukia, while setting aside the Judgment and Order dated 27.08.2013, passed by the learned SDJM, Margherita, in GR Case No. 206/2007, acquitting the petitioners, upheld the Judgment dated 30.04.2011, passed by the learned SDJM, Margherita, acted illegally on the face of the record as he had exceeded his jurisdiction. He submits that the Judgment dated 30.04.2011, passed by the learned SDJM, Margherita, was set aside by the learned Sessions Judge, Tinsukia, vide it's Judgment and Order dated 01.11.2011, passed in Criminal Appeal No. 11(2)/2011 and remanded the case for fresh adjudication granting liberty to examine further material witnesses. He submits that since the Judgment dated 30.04.2011 had already been set aside and therefore, non-existent in the eyes of law, the same could not have been considered by the learned Sessions Judge, Tinsukia, by upholding the same. He submits that the learned Sessions Judge, Tinsukia, was only required to look into and examine the merits of the Criminal Appeal No. 62(4)/2013, which was filed assailing the Judgment and Order dated 27.08.2013. Therefore, he submits that rather than considering the legality of the Judgment and Order dated

27.08.2013, passed in GR Case No. 206/2007, by examining the merit of a non-existent Judgment & Order dated 30.04.2011, passed by the learned SDJM, Margherita in GR Case No. 206/2007, the learned Sessions Judge, Tinsukia, had committed a grave error and has gone beyond his jurisdiction. Therefore, he submits that on this ground alone, the instant criminal revision petition should be allowed and remanded to the learned Sessions Judge, Tinsukia, for fresh consideration and hearing.

6. Mr. A. K. Dutta, learned counsel appearing for the respondent nos. 1 & 2, though initially objected to such submissions made by the learned Senior Counsel for the petitioners, later on, he did not disagree to the proposition of remanding the matter back to the learned Sessions Judge, Tinsukia, due to the procedural lapse committed while passing the impugned Judgment dated 19.02.2015.

7. Mr. K. K. Parasar, learned Addl. P.P., acknowledged the apparent error committed by the learned Sessions Judge, Tinsukia, and is in agreement with the submission and proposal made by the learned Senior Counsel for the petitioners.

8. This Court, on consideration of the submissions made by the learned counsel appearing for the respective parties and on perusal of the impugned order dated 19.02.2015, as well as other materials brought on record is of the considered view that there is a sustainable ground in the argument forwarded by the learned Senior Counsel appearing for the petitioners.

9. It is apparent that the Judgment dated 30.04.2011, passed by the learned SDJM, Margherita, was in essence set aside by the learned Sessions Judge, Tinsukia, vide his order dated 01.11.2011 in Criminal Appeal No. 11(2)/2011, wherein, it has been specifically stated that the learned Sessions Judge, Tinsukia, was of the opinion that the case is a fit case for remand of fresh adjudication in the light of the observations made in the discussion. It was further observed that the learned Trial Court shall be at liberty to examine further materials/witnesses other than Shri Mintu Pradhan. It was also mentioned that the appeal was allowed and the case was remanded for fresh trial in the

light of the observations made in the discussion. Therefore, there is no ambiguity that the Judgment dated 30.04.2011, passed by the learned SDJM, Margherita, in GR Case No. 206/2007 was, in fact, set aside. So, when the matter was remanded to the learned SDJM, Margherita, the same was freshly heard and considered and after recording the statement of the aforesaid Mintu Pradhan (PW-11), under Section 311 Cr.P.C., passed the Judgment and Order dated 27.08.2013. Therefore, when the matter was heard afresh by the learned SDJM, Margherita, and upon consideration of the examination of PWs, including PW-11, i.e., Monti Pradhan, passed the Judgment and Order without considering the Judgment and Order dated 30.04.2011 and therefore, there was no occasion for the learned Sessions Judge, Tinsukia, to get the non-existent Judgment and Order dated 30.04.2011 for reconsideration and examination on merits.

10. In view of the aforesaid discussions and findings of this Court, this Court is of the considered opinion that the instant criminal revision petition should be allowed on the aforesaid ground alone and should be remanded to the learned Sessions Judge, Tinsukia, to consider and hear the Criminal Appeal No. 62(4)/2013 afresh without taking into consideration the Judgment and Order dated 30.04.2011, which has already been set aside by the learned Sessions Judge, Tinsukia, vide it's order dated 01.11.2011.

11. Accordingly, it is directed that the learned Sessions Judge, Tinsukia, shall hear the Criminal Appeal No. 62(4)/2013 on its own merit and decide the same within a period of 2(two) months from passing of this order, as the case relates back to an FIR lodged in the year 2007.

12. Consequently, the instant criminal revision petition is disposed of with the aforesaid directions.

JUDGE

Comparing Assistant