

**IN THE COURT OF THE SESSIONS JUDGE : SONITPUR  
AT TEZPUR**

**PRESENT : Sri A. Borthakur  
Sessions Judge  
Sonitpur, Tezpur**

**CRIMINAL REVISION NO. 55 (S-3) OF 2013**

( Revision against the order, dated 10-12-2007, passed by learned Judicial Magistrate, 1st Class, Tezpur, Sonitpur, in connection with GR Case No. 577/2007. )

**1. Sri Bijay Kalita @ Bitu**

Son of Sri Putul Ch. Kalita  
Resident of BP Tiniali ( Gohain Chuk)  
PO - BP Tiniali  
PS - Tezpur  
Dist – Sonitpur, Assam

**2. Sri Paljit Saikia @ Paltu**

Son of Sri Jatin Ch. Saikia  
Resident of Dihingia Kalita Gaon  
PO - BP Tiniali  
PS - Tezpur  
Dist – Sonitpur, Assam

.... **Petitioners**

**- V E R S U S -**

**The State of Assam**

Represented by Learned Public Prosecutor

... **Respondent**

**ADVOCATES WHO APPEARED IN THIS CASE**

For the petitioner : **Sri Nilakshya Sarma,**  
Advocate

For the Respondent : **Sri H. P. Sedai**  
Public Prosecutor

Date of Argument : 05-05-2014

Date of Judgment : 15-05-2014

## J U D G M E N T

This is a revision petition u/s 397/399 CrPC, preferred against the order, dated 10-12-2007, passed by the learned Judicial Magistrate, 1st Class, Tezpur, Sonitpur, in GR Case No. 577/2007.

### REVISION PETITIONERS' CASE :

2. The revision petitioners' case, precisely, is that in GR Case No.577/2007, u/s 379/34 IPC, the police, after completion of investigation, submitted the charge-sheet on 06-12-2007, showing them absconders. After receiving the charge-sheet, the learned Chief Judicial Magistrate, Sonitpur, Tezpur made over the case to the Court of learned Judicial Magistrate, 1st Class, Tezpur for disposal. The learned Judicial Magistrate, 1st Class, Tezpur, having found the revision petitioners, herein, shown absconders, by order, 10-12-2007, directed to issue Non-bailable Warrant of Arrest against the petitioners. Thereafter, by order, dated 24-04-2008, the learned Judicial Magistrate, 1st Class, Tezpur directed to issue Proclamation and Attachment against the petitioners and further, by order, dated 19-09-2009, they were proclaimed absconders and accordingly, the case was filed against them. It has been further stated in the aforesaid last order that the said case will be reopened on appearance or production of the petitioners.

### GROUND OF REVISION

3. Now, by the instant revision petition, the petitioners have assailed the above order, dated 10-12-2007, on the grounds, inter-alia, that the learned trial Court did not record any reason before issuing the NBWA and P/A ; that no summon was issued against the petitioners ; that the impugned order was passed without adhering to the procedures laid in Sections 70 and 87 CrPC ; that the impugned order was a momentous order, passed mechanically and that the prime consideration at this stage is to ensure that the trial is expedited, for which presence of the petitioners is necessary. It has been stated in the petition that the petitioners for the first time came to know about the GR Case No.577/2007 pending against them in the month of July, 2013 from one of their friends, who is close to one police officer and thereupon, they immediately applied for certified copy of the orders of the Court, charge-sheet, FIR, etc. on 31-07-2013 and the same was delivered on 07-08-2013. Hence, it is prayed to set aside the impugned order

and further, to direct the learned trial Court that in the event of their appearance, the petitioners be released on bail.

4. The record of GR Case No. 577/2007, as called for, is received.

5. I have heard Mr. H. P. Sedai, learned Public Prosecutor for the State and Mr. N. Sarma, learned counsel for the petitioners. I have gone through the records of GR Case No. 577/2007.

**POINT FOR DETERMINATION :**

6. Whether the impugned order, dated 10-12-2007, passed, in GR Case No. 577/2007, by the learned Judicial Magistrate, 1st Class, Tezpur, Sonitpur, is liable to be set aside for the reasons, mentioned in the revision petition ?

**THE DECISION AND THE REASONS THEREFOR**

(A) DELAY CONDONED :

( in Misc ( CrI) Case No. 04/2013

since disposed of )

7. It may pertinently be mentioned that Under Article 131 of the Act 36 of 1963 ( Limitation Act of 1963), the period of limitation for filing revisional application before any court is 90 days from the date of the order or sentence sought to be revised. However, u/s 5 of the Limitation Act, the prescribed period of limitation can be condoned for sufficient cause beyond the control of the petitioner and not for default on his part. In para XII of the revision petition which is supported by an affidavit and in petition No.1303, dated 12-09-2014, whereupon Misc. (CrI) Case No. 04/2013 was registered, the petitioners have stated that for the first time they came to know about the GR Case No.577/2007 pending against them in the month of July, 2013 from one of their friends, who is close to one police officer and thereupon, they immediately applied for the certified copy of the orders of the learned trial Court, charge-sheet, FIR, etc., on 31-07-2013 and the same was delivered on 07-08-2013. Based on the averments made in the petitions, aforementioned, and scrutiny of the record of GR Case No.577/07 and further, the certified copy of the order sheet thereof, this Court was of the considered opinion that the revision petitioners had no knowledge about the impugned initial order,

passed by the learned trial Court, after receipt of the charge-sheet, on 06-12-2007, regarding issuance of the Warrant of Arrest and P & A against them, and as such, the long delay was being for sufficient cause, beyond their control and for ends of justice, the delay was condoned, as prayed, vide order, dated 13-09-2013, passed in Misc. (CrI) Case No. 04/2013.

(B) STATUS OF THE CASE :

8. On perusal of the record of GR Case No. 577/07, it appears that the police, after completion of investigation into an incident of theft of 60 meters of BSNL cable, approximately valued at Rs.30,000/-, that occurred on the night of 08-04-2007, submitted the charge-sheet, on 06-12-2007, without mentioning the relevant provision of the IPC, showing the accused-petitioners as absconder. Upon receipt of the charge-sheet, the learned trial Court, by the impugned order, dated 10-12-2007, directed to issue Warrant of Arrest against the petitioners, at the first instance, and having returned the Warrant of Arrest without execution, on the ground of being not available at their address, by order, dated 24-04-2008, directed further to issue Proclamation and Attachment, and by the subsequent order, dated 19-09-2009, the learned trial Court, on being satisfied with the police report that there was no trace of the revision-petitioners, proclaimed them absconders and accordingly, the case was filed with further order to reopen the case, when they are produced or on their appearance.

(C) FINDING :

9. On perusal of the impugned order, dated 10-12-2007, it appears that the learned trial Court directed to issue Non-bailable Warrant of Arrest (NBWA) against the petitioners just on receipt of the charge-sheet, where they were shown absconders. The learned trial Court without recording any satisfaction as to the existence of grounds, directed to issue NBWA against the petitioners and so also directed to issue Proclamation and Attachment orders, later on, against them without giving any clear finding, on perusal of records, if the accused-petitioners had really absconded. That being so, the impugned order was passed apparently in contravention of the provisions contained in Sections 82, 83 and 87 CrPC. Undoubtedly, the prime consideration at this stage is to ensure that the trial is commenced in the case and the same is expedited, for which presence of the accused-petitioners is necessary.

10. It is brought to the notice of this Court that the accused-petitioners, who are with brilliant academic career and permanent residents, under Tezpur PS had not absconded at all.

11. Considering the matter in its entirety and in the interest of justice, it is hereby directed that **the accused-petitioners shall, within seven days from today, appear in the learned trial Court at Tezpur, in connection with the case, aforementioned, and if, on their appearance, in the learned trial Court, the accused-petitioners apply for regular bail, the learned trial Court shall consider and dispose of the same in accordance with law.**

12. Accordingly, the revision stands partly allowed with the above direction.

13. Send back the record of GR Case No. 577/2007 along with a copy of this judgment.

Given under my Hand and Seal of this Court on this the 15th day of May, 2014.

**( A. BORTHAKUR )  
SESSIONS JUDGE  
SONITPUR : TEZPUR**

Dictated and corrected by me

**(A. BORTHAKUR)  
SESSIONS JUDGE,  
SONITPUR :: TEZPUR**

Typed by me,  
on dictation :

(J.K. Muru, Steno )

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