

**IN THE COURT OF ADDL. SESSIONS JUDGE
SONITPUR :: TEZPUR**

**PRESENT: M.R. SHARMA
ADDL. SESSIONS JUDGE
SONITPUR :: TEZPUR**

CRIMINAL REVISION CASE NO. 13(S-1) OF 2014

Revision Petition under Section 379/399 Cr.P.C against the Judgment and Orders dated 27-11-13 and 07.02.14 passed by Dr, M. Baruah, , learned C.J.M., Sonitpur at Tezpur passed in G.R. Case No. 1892/10, u/s 306/34 of IPC.

Smti. Janaki Deka Petitioner

Versus

The State of Assam

Appearance

Sri. H.P. Sedai
Learned Addl. PP : For the State

Sri S.K. Sharma : For the Petitioner
Learned Counsel

Date of Hearing : 05-05-14, 13-05-14

Date of Judgment : **13-05-14**

M. Baruah
13/5/14
ADDL. SESSIONS JUDGE
SONITPUR, TEZPUR

J U D G M E N T

This criminal revision petition has been filed under Section 397/399 of Criminal Procedure Code against the orders dated 27-11-2013 and 07.02.14, passed by Dr. M. Baruah learned C.J.M., Sonitpur at Tezpur passed in G.R. Case No. 1892/10, u/s 306/34 of IPC.

The facts of the case in brief are that on 01.10.10, the complainant Sri Prabhat Hazarika lodged an FIR with the Officer-In-Charge of Kacharigaon Police Out Post under Tezpur Police Station alleging inter alia that on 01.10.10 morning his father missing during his morning walk. On their search they recovered their father from a pond amidst field but in dead condition. A letter was alleged to have found in the pocket of his shirt which was hung on a stick post at the bank of the pond. The family members alleged to have doubt against the persons named in the alleged letter wherein it was written that "due to Girish Deka and his wife and Satikai he had done the act " as responsible for the death of their father.

After receipt of the FIR, the O.C of Tezpur PS registered a case vide Tezpur PS Case No. 900/10 u/s 306/34 of IPC corresponding to GR Case No. 1892/10 and started investigation, and submitted charge-sheet u/s 306/34 of IPC against the accused Sri Girish Deka, Sri Rupeswar Deka and the present petitioner Smti. Janaki Deka showing her as an absconder in the charge-sheet.

After receipt of the charge-sheet and the case record in connection with 900/10 u/s 306/34 of IPC corresponding to GR Case No. 1892/10, the CJM was pleased to pass an order on dated 03.06.13 for issuing summons to the accused fixing 31.07.13 for appeanec. But the learned CJM on 27.11.13 passed the following order "accused not present, summon not returned, issue again...issue NBWA to absconder accused...." and as such the

K. Deka

12/5/14

12/5/14

12/5/14

learned trial court was pleased to issue NBWA against the absconder accused i.e. present petitioner without assigning any justified reason for directing issuance of the warrant of arrest against the petitioner accused who was never served with any summons in the present case and subsequently the Court on 27.11.13 and 07.02.14 mechanically passed orders for issuing NBWA against the accused petitioner without assigning any reason.

Being highly aggrieved of and dismissed with the impugned orders dated 27.11.13 and 07.02.14, of Dr, M. Baruah learned Chief Judicial Magistrate, Sonitpur at Tezpur passed in G.R. Case No. 1892/10, u/s 306/34 of IPC, the present petitioner has filed this criminal revision before this Court mainly on the following grounds:-

- 1) That the impugned orders dated 27.11.13 and 07.02.14 of the learned trial court is contrary to law and facts and cannot be sustained in law and even on equitable consideration.
- 2) That the learned trial court committed gravely an error in not applying his judicial mind in labeling the petitioner accused as an absconder without arriving to a clear finding to that effect as there lies a difference between an Investigating Agency treating an accused as absconder and a Magistrate coming to a clear finding as to whether the accused has really absconded or not.
- 3) That the petitioner accused was not really aware of the pendency of the case against her.
- 4) That the learned trial court failed to assign any reason whatsoever for directing issuance of NBWA against the accused petitioner.

Admitted
12/5/14

- 5) That the learned trial Court did not even peruse the case before directing issuance of NBWA against the accused petitioner.
- 6) That the learned trial court acted with material illegality and irregularity in the exercise of his jurisdiction.
- 7) That the impugned orders to the learned trial court are against law and facts of this case and the same are required to be set aside.
- 8) That the learned trial court has misconceived and misread the provisions of law and arrived at his wrong finding which is not sustainable in law.
- 9) That the impugned orders suffer from a great illegality or impropriety or error calling for interference under the revisional jurisdiction of this court.

I have the learned counsels for both sides. The learned counsel for the Revision Petitioner has referred to **2009 (2) GLR 254 in Siraj Ali and Ors. VS State of Assam and Another**. In the said Judgment the Hon'ble Gauhati High Court had directed the Court to pass an order of issuing warrant of arrest after recording reasons and without being mechanical.

13/5/14
In this instant case, I have gone through the orders 27.11.13 and 07.02.14 passed by the learned Chief Judicial Magistrate. I have also gone through the Lower Court Records. It is seen from the charge-sheet that the accused was shown as an absconder by the police at the time of submission of the charge-sheet. I have also gone through the case diary and I find that the I.O. of the case had made attempts to search the accused Smti. Janaki Deka on 26.04.11 at her residence, but she was not found. It is also reveal from the diary that on 14.11.10, while arresting the other

two accused persons, this accused Janaki Deka was absconding. So, it cannot be held that the Investigating Officer had to made attempts to arrest the accused Smti. Janaki Deka and had mechanically shown as an absconder accused. The record also reveals that the warrant was issued on 30.11.13 and the report on the warrant dated 07.02.14 shows that she was not found in her residence. However, as she was an absconder no summons were issued by the learned trial court and after the charge-sheet was submitted on 27.11.13 warrant was issued as she was charge-sheeted absconder. As stated earlier the I.O. had made attempts to arrest the accused and had not shown her as absconder mechanically. Accordingly, I find that the learned trial court have not passed the orders dated 27.11.13 and 07.02.14 mechanically by issuing orders for NBWA. I find no material illegality and irregularity in passing the said order which are also not against the law. The learned trial court has not passed any order which is not sustainable in law. I don't find any illegality or impropriety in the said orders of the learned trial court calling for interference by this court.

The Revision Petition is dismissed accordingly.

Return the lower court records along with a copy of this judgment of this Court forthwith.

Judgment is given under my hand and seal of this Court on this **13th day of May, 2014.**

M Sharma

(Smti. M.R. Sharma)
Addl. Sessions Judge
Tezpur, Sonitpur