

IN THE COURT OF SESSIONS JUDGE, SONITPUR AT TEZPUR

CRIMINAL REVISION NO :- **24 OF 2015**

Present : **Mridul Kumar Kalita, AJS
Sessions Judge, Sonitpur
Tezpur**

Parties Sri Baji Nag,
S/O Late 11No. Budhuwa Nag
Village – Barjuli Tea Estate, Line
No.4,
PS- Rangapara,
District – Sonitpur, Assam

-vs-

State of Assam.

Counsel for the Petitioner : Sri Someshwar Borah & Smt Mitali
Kalita, Advocates

Counsel for Opposite Party : Mr. Hari Prasad Sedai,
Public prosecutor
Sonitpur

Date of hearing : 05/05/2015

Date of Judgment : 06/05/2015

J U D G M E N T

1. This revision petition has been preferred, u/s 397/399 CrPC, by accused Sri Baji Nag against order, dated 18-02-2015, passed by Smt. B. Khaklary, learned Judicial Magistrate, 1st Class, Tezpur, in GR case No. 2397/2013 u/s 366 IPC.

2. The facts relevant for disposal of this revision petition, in brief, are as follows :

(a) An FIR was lodged by one Sri Mangal Tanti, inter-alia, alleging that on 15/09/2013 at about 7:00 PM, his daughter Miss Sujata Tanti went to purchase some materials from a nearby shop, at that time the accused induced her and took her to the back side of the shop and tried to assault her. On receipt of the FIR, the investigation was initiated and ultimately, charge-sheet was laid u/s 376(2)(h)/ 511 IPC against the accused Sri Baji Nag showing him as an absconder.

(b) The case is now pending for trial in the court of Smt. B. Khaklary, Judicial Magistrate, 1st Class, Tezpur, Sonitpur.

(c) On 18/2/2015 the accused could come to the court due to illness and on that day learned defence counsel file a petition before the court showing cause of absence of the accused, however, learned judicial magistrate first class by order dated 18/2/2015 rejected the prayer and issued non-bailable warrant of arrest against the accused. This order dated 18/2/2015 is impugned in this instant case.

(d) It is stated in the criminal revision petition that the learned judicial magistrate first class Passed the impugned order without application of mind.

3. I have perused the case record, the case diary and heard learned counsel for accused/petitioner as well as learned Public Prosecutor.

4. For the sake of convenience, the order which is impugned herein is quoted as below:-

"18/02/2015 – The accused is absent. Seen the petition No. 5001 file on behalf of the accused, stating that due to illness the accused court not to appear before the court today. The petition is followed by any wakalatnama. The said petition is also not

supported by any medical document. Hence the petition stands rejected. Issue NBWA against the accused.

Fix 30/3/2015 for app."

5. A mere cursory look on the impugned order will reveal the reason which compelled learned Judicial Magistrate, 1st Class, to issue Non-Bailable Warrant of Arrest against the accused. The accused failed to justify his absence before the court on the date fixed and the learned magistrate, in exercise of her discretion, deemed it fit to issue non-bailable warrant of arrest. I do not find any irregularity, impropriety or illegality in the order of the learned Judicial Magistrate, 1st Class. This court, therefore, refuses to interfere with the impugned order, in exercise of its revisional jurisdiction.

6. However, Learned defence counsel has also submitted that the accused is ready to face trial and he shall appear before the trial court on all dates fixed by the Court without fail. It appears that on, 18/2/2015, the learned defence counsel failed to present the case of accused properly before the learned Judicial Magistrate First Class and hence NBWA were issued. Learned Public Prosecutor has submitted that considering the fact a lenient view of the matter may, perhaps, be taken.

7. In view of the facts and circumstances, as stated above, though this Court refuses to interfere in the order, dated 18/2/2015, passed by learned Judicial Magistrate, 1st Class, as no infirmity is found therein, however, an observation is hereby made that the accused shall surrender before the Court of Judicial Magistrate, 1st Class, within fifteen days from the date of this order and on doing so, learned Judicial Magistrate, 1st Class, shall allow the accused to go on bail of Rs.20,000/- with one surety of like amount to the satisfaction of that court. The learned Magistrate may impose any other condition which she thinks fit, under the facts and circumstances of this case.

8. This Criminal revision petition is according disposed of.

Given under my hand and Seal of this Court on this the 6th day of
May 2015.

(M. K. Kalita)
SESSIONS JUDGE
SONITPUR : TEZPUR

Dictated and corrected by me

(M. K. Kalita)
SESSIONS JUDGE,
SONITPUR :: TEZPUR