

IN THE COURT OF SESSIONS JUDGE, SONITPUR AT TEZPUR

Criminal Revision Case NO. :- **23 of 2015**

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

Parties

1. **Md. Sahed Ali,**
S/O Md. Tanur Ali,
R/O Gudamghat,
PS – Chariduar,
Dist. Sonitpur (Assam).
-vs-

1 State of Assam represented by
learned Public Prosecutor.

Counsel for the Petitioner : Md. N. Islam,
Advocate.

Counsel for Opposite Party : Sri H.P. Sedai, P.P.

Date of hearing : 05/05/2015

Date of Order : 06/05/2015.

O R D E R.

1. This Criminal Revision has been preferred u/s 397/399 Cr.P.C., against the order dated 08-04-2015 passed by learned Sub-Divisional Judicial Magistrate (S), Tezpur in G.R. Case No. 395 of 2015.

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

(a) that one Miss Rashida Khatun lodged an FIR before the Officer-in-charge of Chariduar Police Station, *inter-alia*, alleging that accused Sahed Ali has committed rape on her on 24-02-2015. On receipt of the FIR Officer-in-charge of

Chariduar Police Station, registered Chariduar PS Case No. 24/15 u/s 341/109/420/376 of IPC and ultimately on completion of the investigation, charge-sheet was laid u/s 341/420/376 of IPC against Musstt Sajida Khatun (showing her in custody) and Md. Sahed Ali (showing him as absconder column).

(b) The case (GR No. 395/15) was transferred to the Court of learned SDJM(S), Sonitpur, for disposal. The learned SDJM(S), Sonitpur after receipt of the case record issued Non-bailable Warrant of Arrest against the accused Md. Sahed Ali on 08-04-2015. This order dated 08-04-2015 is impugned in the instant revision petition.

3. I have perused the materials on record and heard learned counsel of both sides.

4. The impugned order, is quoted herein below for the sake of convenience:-

"08-04-2015. Received and perused the C.R. Accused Sajida Khatoon is in jail. Seen the petition (No. 966/15) filed for the bail of accused Sajida Khatoon. Perused the C.R, C.D. and heard learned counsel for the petitioner and learned Asstt. P.P. for the state.

It appears that there is materials against accused Sajida Khatoon and chargesheet u/s 341/420/376 IPC has been submitted against accused Sajida Khatoon and Sahed Ali. Therefore, after considering the materials on record and considering the gravity of offences, the prayer for bail of accused Sajida Khatoon is rejected.

I have gone through the C.D. It appears that I.O. had tried to arrest accused Sahed Ali several times and conducted house search. But, accused Sahed Ali could not be found. So, I.O has laid charge-sheet against the accused showing him as absconder.

Therefore, it appears that accused Sahed Ali is absconding and concealing himself. Hence, issue NBWA against accused Sahed Ali.

Fixing 02-05-2015 for S.R and 21-04-2015 for production of accused Sajida Khatoon."

5. Learned counsel for the accused petitioner has challenged the impugned order, *inter-alia*, on the following grounds :-

(a) that the accused Sahed Ali is a local resident of Gudamghat under Chariduar P.S. and he was available at his residence every day but police has falsely shown him as an absconder in the chargesheet;

(b) that police never visited the house of the accused ;

(c) that the trial court erred in law by issuing NBWA against the petitioner;

and

(d) that it is the exclusive power of the Court to declare a person as absconder and not police.

6. On perusal of the impugned order, it appears that the learned SDJM(S), Sonitpur, has not mechanically passed the order of issuance of NBWA. Learned SDJM(S), has perused the case diary and has observed that the I.O. of this case has made several attempt to arrest the accused by going to his house, however, he was not found. Thus, the satisfaction of learned Magistrate that the accused has evaded arrest is based on relevant materials in the case diary and he has reflected the same in his order. Therefore, it cannot be said that learned SDJM(S) has mechanically passed the order of issuance of NBWA against the accused. I have also perused the case diary wherein the efforts of the Investigating Officer in attempting to arrest the accused are clearly reflect. I am of the considered opinion that under the facts and circumstances of this case, this is not a case where the learned SDJM(S), Sonitpur, has mechanically issued the Warrant of Arrest. The order sheet is reflective of his application of mind, on materials available on record, before issuance of NBWA.

7. For the reasons stated above, this Court refused to interfere with the impugned order. The accused is directed to surrender before the Court of learned SDJM(S), Sonitpur, Tezpur.

8. This Criminal Revision petition is accordingly disposed of on contest.

9. Given under my hand and seal of this court on this day, 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.

Transcribed and typed by me.

(R. Hazarika)
Steno.