

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

PRESENT : Smt. M.R. Sharma
Additional Sessions Judge
Sonitpur, Tezpur

CRIMINAL REVISION NO. 53 (S-3) OF 2012

[Revision Petition filed u/s 397 / 399 Cr.P.C. against the Final Order dated 22-08-2012 passed by Smt. B. Kshetry, Addl. Chief Judicial Magistrate, Sonitpur, Tezpur, in connection with C.R. Case No. 67 / 2000]

Md. Najumuddin Saikia **Petitioner**

-VERSUS-

1. Sri Mrigen Sarmah
Regional Manager, Assam Financial Corporation

2. State of Assam **Respondents**

ADVOCATES WHO APPEARED IN THIS CASE

For the petitioners : Sri A. Paul, Advocate

For the Respondents : Smt. M. Bhattacharrya,
Advocate

Date of Argument : 10-01-2013

Date of Judgment : **29-01-2012**

J U D G M E N T

This Criminal Revision has been registered on a petition No. 1273 dated 03-09-2012, Under Section 397 / 399, Cr.P.C. against the Final Order dated 22-08-2012 passed by Smt. B. Kshetry, Addl. Chief Judicial Magistrate,

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Sonitpur, Tezpur, in connection with C.R. Case No. 67 of 2000 to examine the correctness, legality and propriety of the impugned order.

2. The case of the revision petitioner is that the petitioner is the accused in C.R. Case No. 67 of 2000, pending in the Court of Additional Chief Judicial Magistrate, Sonitpur, Tezpur which was lodged by the Respondent No. 1 under Section 138 / 142 of the N.I. Act, 1881. On completion of trial of the Complaint case, the learned Addl. Chief Judicial Magistrate, Sonitpur, Tezpur acquitted the accused-petitioner from the charges by the judgment and order dated 19-09-02002. Being aggrieved by the judgment of acquittal, the Respondent No. 1 filed an appeal against the acquittal before the Hon'ble Gauhati High Court which was registered as Criminal Appeal No. 61 / 2003. The Hon'ble High Court was pleased to set aside the aforesaid judgment of acquittal of the accused-petitioner vide its judgment dated 19-08-2010 and the case was remanded back to the learned Addl. Chief Judicial Magistrate, Sonitpur, Tezpur for deciding the same afresh in accordance with law.

It is also averred by the revision petitioner that on receiving the case after remand, the accused-petitioner and the Respondent No. 1 were summoned to appear before the Court of the learned Addl. Chief Judicial Magistrate and on their appearance, initially the case was fixed for evidence of the complainant side (original complainant in the case) but as the Respondent No. 1 declined to give further evidence, the learned trial Court

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directly posted the case for argument without asking the accused person whether he desires to adduce any evidence in his defence. That thereafter, the accused (revision petitioner) on 16-08-2012, moved a petition before the learned trial Court praying to allow him to adduce evidence of his defence. But the learned trial Court vide its order dated 22-08-2012 rejected the aforesaid prayer of the accused-petitioner and re-fixed the matter for argument as earlier.

3. Being highly aggrieved and dissatisfied with the impugned order dated 22-08-2012 of the learned Addl. Chief Judicial Magistrate, Sonitpur, Tezpur, the present petitioner has filed this criminal revision before this Court mainly on the following grounds :-

That the impugned order is illegal, improper and lack of propriety and hence, the same is not sustainable in law;

That the learned trial Court while passing the impugned order has not applied its judicial mind in its proper perspective and there has committed error in law;

That the learned trial Court failed to understand the principles of law involved into the matter and therefore, passed the impugned order contrary to the provisions of law as laid down by the Hon'ble Gauhati High Court which is binding on the learned trial Court;

That if the impugned order is allowed to be continued it will cause miscarriage of justice and also will

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amount to utter disregard of the High Court and hence it is liable to be interfered and set aside;

that the impugned order the learned trial Court appears to be biased in favour of the Complainant.

Under the above facts and circumstances, the Revision Petitioner has prayed for setting aside the impugned Final Order dated 22-08-2012.

4. I have heard the learned counsel Sri A. Paul, appearing for the revision petitioner as well as the learned counsel Smt. M. Bhattacharyya, appearing for the Respondent. I have perused the lower Court records and also all other materials available on record.

5. Before coming to a decision on the grounds taken by the revision petitioner, the judgment and order of the Hon'ble High Court dated 19-08-2010, passed by the Hon'ble Mr. Justice B.D. Agarwal has to be scrutinize minutely.

The Hon'ble Gauhati High Court has in the said judgment held that the accused was acquitted by the trial Court primarily on the ground of non-examination of Bank Officers to prove that the cheque was presented and dishonoured. At the same time, the Hon'ble Gauhati High Court has given the opinion that it was not proper for the trial Court to acquit the accused on such 'flimsy ground'. The Hon'ble High Court also held it was settled position of law that a fact can be proved from other corroborative evidence and also Section 114 of the Evidence Act permits

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the Court to presume existence of certain facts. In the said judgment, the Hon'ble Gauhati High Court has also stated that the legal position to prove an offence under Section 138 of the NI Act stands on different footing and under Section 139 of the NI Act, the Court can take presumption in favour of the holder of the cheque, unless contrary is proved by the accused person. Also Section 140 of the NI Act stipulates that an accused may not be allowed to raise defence that he had no reason to believe that the cheque will be dishonoured on presentation in the Bank. The Hon'ble Gauhati High Court while discussing the judgment of the trial Court held that there was no denial about the enforceable liability on the part of the accused nor any defence was taken about the genuineness of the signature on the cheque. The only plea was that the cheque was forcibly taken by the PW-1 and the same was not produced in the Bank.

Further more, the Hon'ble Gauhati High Court in the said judgment in para 6 has stated as follows :

"6. It is the settled principle of law that if an alibi is taken by the accused the same has to be proved by giving cogent evidence. In the present case, except giving suggestions to the witnesses no evidence in defence was given. Similarly, the report from the Indian Overseas Bank (Exhibit - 4) to the Pubjab National Bank, Tezpur Branch, Tezpur, with regard to dishonour of cheque on the ground of insufficiency of fund, was also not challenged. The complainant's witnesses were also not given any suggestions that the Exhibit - 4 is a forged report. Hence, the defence suggestion that the cheque was not deposited in the Bank, cannot be accepted."

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Discussing as above, the Hon'ble Gauhati High Court remanded the case for deciding the same afresh in accordance with law.

6. The revision is against the order dated 22-08-2012, passed by the learned additional Chief Judicial Magistrate, Sonitpur, Tezpur, whereby the trial Court had rejected the prayer of the accused-petitioner for allowing him to adduce evidence and so, as the Hon'ble High Court in the judgment as discussed above and quoted, also stated that the trial Court can draw conclusion u/s 138 and u/s 139 of the NI Act as well as u/s 140 of the NI Act. The judgment is very clear that the trial Court is to decide afresh on the basis of the materials on record.

I have gone through the citation in the case of ***Mukunda Ram Das, Petitioner Vs. Manab Lahkar, Opp. Party***, reported in **2011 (4) GLT 218**. The said judgment is not applicable with the facts and circumstances of this case.

7. So, concluding from the directions of the Hon'ble Gauhati High Court, the ground taken by the revision petitioner that trial Court had passed the order dated 22-08-2012 without applying judicial mind is not tenable. Also in the light of the judgment of the Hon'ble High Court, the learned trial Court had passed the order dated 22-08-2012 legally, properly and had applied judicial mind. The learned trial Court has not failed to understand the principles of law and the provisions of law, and also the directions are clear hat the accused cannot be

allowed to adduce evidence at this stage, laid down by the Hon'ble Gauhati High Court in the said judgment

The learned trial Court has passed the order with most propriety and has not disregarded the order of the Hon'ble Gauhati High Court.

8. Accordingly, the order dated 22-08-2012, passed by the learned trial Court does not require any interference and is not liable to be set aside.

9. With the above order, this Criminal Revision is dismissed on contest.

Return the record of CR Case No. 67 / 2000 along with a copy of judgment of this Court.

This Revision stands disposed of.

Given under my hand and seal of this Court on this 29th day of January, 2013.

(M.R. Sharma)
Additional Sessions Judge
Sonitpur : Tezpur

Dictated and corrected by me
and every page bears my signature.

(M.R. Sharma)
Additional Sessions Judge
Sonitpur : Tezpur

Transcribed and Typed on dictation by me –

(I. Goswami)
Stenographer