

(2018) 10 GAU CK 0001
In the Gauhati High Court

Case No : Criminal Revision Petition No20 Of 2017

Abdul Mumin Barbhuiya

APPELLANT

Vs

State Of Assam And Ors

RESPONDENT

Date of Decision : 01-10-2018

Acts Referred:

Code of Criminal Procedure, 1973 — Section 313, 397, 401
Indian Penal Code, 1860 — Section 294, 447, 448, 506

Citation : (2018) 10 GAU CK 0001

Hon'ble Judges : Hitesh Kumar Sarma, J

Bench : Single Bench

Advocate : M J Quadir, A H M R Choudhury

Final Decision : Disposed Off

Judgement

1. This is a criminal revision petition, filed under Section 397/401 CrPC, challenging the legality, propriety and correctness of the order, dated

09.12.2016, passed by the learned Sessions Judge, Hailakandi in Criminal Petition No.04/2016, upholding the order of conviction of the accused-

petitioner recorded by the learned Additional Chief Judicial Magistrate, Hailakandi, vide judgment and order, dated 31.12.2015 under Section 448 IPC,

but, modifying the sentence imposed upon the accused-petitioner to one under Section 447 IPC and to pay a fine of Rs.500/- with a default clause.

Although the revision petition has been posted for admission today, yet record shows that it was admitted on 25.01.2017, and therefore, it ought to

have been listed for hearing. However, LCR has already been received and both the parties are represented by the learned counsel, who expressed

their willingness to take part in hearing.

2. In view of above, I have heard Mr. MJ Quadir, learned counsel for the

petitioner and Mr. NS Laskar, learned counsel for the private respondent as well as the State respondent, who is represented by Mr. PS Lahkar, learned Addl. P.P.

3. I have perused the impugned judgments of the trial court as well as the appellate court. Also perused the evidence of the witnesses recorded by the learned trial court.

4. The FIR, on the basis of which the case was registered, was investigated and, finally, submitted chargesheet by the Investigating Police Officer,

based on the allegation that after the death of her husband, the informant was tried to be ousted from her house by the accused-petitioner and others.

That apart, the accused-petitioner demanded some amount of money from the informant over phone. On the date of occurrence i.e. 12.07.2011, the

accused-petitioner and others entered into the land possessed by the informant with a view to commit an offence.

5. After exhausting all the required formalities, the learned trial court explained the particulars of offences to the accused-petitioner and others under

Sections 448/294/506 IPC and proceeded with the trial of the case. In course of trial, after recording evidence of witnesses of prosecution, statement

of the accused-petitioner and others were recorded, under Section 313 CrPC, and on hearing arguments, the learned trial court delivered the judgment

and order, dated 31.12.2015, in G.R. Case No.977/2011, convicting and sentencing the accused-petitioner to pay fine of Rs.1000/- with a default

clause for commission of offence under Section 447 of IPC. The other accused persons were acquitted except the present revision petitioner.

6. Against this judgment of the learned trial court, an appeal was preferred by the accused-petitioner in Criminal Appeal No.04/2016. The appeal was

disposed of by the learned Sessions Judge, Hailakandi, vide judgment dated 09.12.2016, retaining the conviction of the accused-petitioner, but,

modifying the provision of the sentence under which conviction was rendered from Section 448 IPC to one a Section 447 IPC, and reducing the fine

from Rs.1000/- to Rs.500/-.

7. On perusal of the evidence on record, it is found that PW.1 is the informant and PW.2 is her daughter. On 14.09.2011, in the midnight, the accused-

petitioner and others trespassed into her homestead and demanded to make payment of money for which demand was made earlier over cell phone

call and to hand over her daughter to them as well as to vacate homestead under her possession.

8. During cross examination, she is heard to state that she had filed the instant case after receiving summon in respect of the case instituted upon her

by the accused-petitioner, meaning thereby, the instant case is an after-thought. Whatever the PW.1 stated in her evidence received no collaboration

from the statement of PW.2 (her daughter), as PW.2 had categorically stated, in her evidence, that somebody called her over mobile and demanded

money. Her such evidence would mean that the informant (PW.1) lied, as according to PW.1, demand was made to her. Whatever it may be, this

Court is not concerned with the demand of money or otherwise, this Court is concerned with the alleged offence under Section 447 IPC i.e.

trespassing by the accused-petitioner into the land in the possession of the informant.

9. The evidence of PW.1 and PW.2 receives absolutely no collaboration from the evidence of PW.3, PW.4 and PW.5, who are, in fact, the

independent witnesses in this case. Their evidence is that the accused-petitioner and others pelted stones in the house of the informant from outside

their campus standing by the side of a pond. The evidence of these three witnesses also found to be in the tune in respect of the fact that they had

seen the accused-petitioner and others outside the campus of the informant. If such evidence is to be relied upon, then it appears that the accused-

petitioner and others did not enter into the land possessed by the informant, attracting an offence under Section 447 IPC.

10. Such evidence of witnesses, coupled with the admitted fact that instant FIR was initiated by the PW.1 only after receiving summon from the court

in a case which was instituted by the accused-petitioner against her, make it appear that the informant (PW.1) tried to put up a concocted case.

11. Therefore, this Court has no hesitation to hold that the institution of the instant FIR is an after-thought. That being so, judgment rendered by the

learned trial court in the present case does not appear to have based on the evidence on record, and as such, the same is incorrect and improper. In

the considered view of this Court, it is a fit case for interference in exercise of revisional power of this Court. Which is done accordingly. Judgments

of the trial court as well as the appellate court, referred to above, are set aside.

12. Resultantly, the revision petition stands allowed and disposed of.
13. Return the LCR with a copy of this order.