

(2019) 05 GAU CK 0090

In the Gauhati High Court

Case No : Criminal Revision Petition No. 22 Of 2010

Dilip Baruah

APPELLANT

Vs

State Of Assam

RESPONDENT

Date of Decision : 23-05-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 397, 401
Indian Penal Code, 1860 — Section 294, 427, 448, 506

Citation : (2019) 05 GAU CK 0090

Hon'ble Judges : Hitesh Kumar Sarma, J

Bench : Single Bench

Advocate : Nm Hazarika, Rj Baruah

Final Decision : Partly Allowed

Judgement

1. This is a Criminal Revision Petition, filed under Sections 397/401 of the Cr.PC, challenging the legality and propriety of the judgment and order, dated 27.11.2009, passed by the learned Sessions Judge, Dhemaji in Criminal Appeal No. 15(3)/2009 upholding the order recorded in the judgment and order, dated 03.08.2009, passed by the learned Judicial Magistrate, First Class, Dhemaji in GR (Gmk) Case No. 537/2008 and modifying the substantive sentence of rigorous imprisonment for 6 (six) months to simple imprisonment for 2 (two) months and enhancing the fine of Rs. 500/- to Rs. 1,000/- and in default simple imprisonment for 1 (one) month.

2. I have heard Mr. NM Hazarika, learned counsel for the petitioner as well as Mr. RJ Baruah, learned Additional Public Prosecutor, appearing for the State respondent.

3. The fact of the case is that on 28.05.2008, in the midnight, the accused entered the house of the informant, while her husband was absent and she was sleeping with her minor children and searched her husband in the house putting threats to the informant.

4. On the basis of this allegation, the police case was registered and the police investigated into it. On completion of investigation, the charge-sheet against the accused-petitioner was laid under Sections 448/294/506/427 of the IPC.

5. After exhausting all required legal formalities, the learned court below framed a formal charge against the petitioner under the aforesaid provisions of law and after conclusion of trial, convicted the petitioner and sentenced him to rigorous imprisonment for 6 (six) months and a fine of Rs. 500/- with a default clause under Section 448 of the IPC. On appeal, the substantive sentence was modified and reduced to simple imprisonment for 2 (two) months and the fine was enhanced from Rs. 500/- to Rs. 1,000/-.

6. I have perused the evidence on record as well as the impugned judgments.

7. The evidence on record clearly indicates that the accused-petitioner trespassed into the house of the informant and that fact has been substantiated without there being any such contradiction which made the evidence unbelievable.

8. The learned counsel for the petitioner has also submitted, during the course of argument, that he is not opposed to the finding recorded by the learned courts below holding the accused guilty for the offence under Section 448 of the IPC. However, he has submitted that considering the nature of the offence and the background facts of the case, the punishment imposed upon the petitioner is in the higher side and penalty in the form of fine would have been sufficient to meet the ends of justice. The learned Additional Public Prosecutor, Mr. Baruah has not opposed to such submission made by the learned counsel for the petitioner in view of the facts on record.

9. This court has also considered the submission and found that the submission made by the learned counsel for the petitioner has force in the background facts of the case.

10. That being so, this court is of the view that the substantive punishment imposed upon the petitioner be set aside and accordingly done. The fine imposed upon the petitioner by the learned appellate court, i.e. Rs. 1,000/- with the default clause is retained being sufficient punishment to meet the ends of justice.

11. Accordingly, the accused-petitioner is directed to surrender before the learned court below to serve out the sentence of payment of fine and in default of payment of fine, the substantive punishment as imposed by the learned appellate court of Sessions Judge vide the judgment, referred to above.

12. This revision petition is, accordingly, partly allowed.

13. Send down the LCR along with a copy of this judgement.