

GAHC010006102012



2024:GAU-AS:12243

**THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

Case No. : Crl.Rev.P./290/2012

MAMUD ALI and 2 ORS
SON OF LATE CHAN MIAH @ CHAN MAMUD

2: MIRAJ ALI
SON OF LATE CHAN MIAH @ CHAN MAMUD

3: MAZIBUR RAHMAN
SON OF JAHUR ALI ALL ARE RESIDENT OF VILL- BARBARI P.S.
LAHORIGHAT DIST. MORIGAON
ASSAM

VERSUS

THE STATE OF ASSAM

Advocate for the Petitioner : MR.G SAROWAR, MR.N UDDIN,MR.M ISLAM,MRM RAHMAN

Advocate for the Respondent : MRSK N MAHAMMAD, ,MR.S RANA,PP, ASSAM

Date : 04-12-2024

**BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY**

JUDGMENT & ORDER (ORAL)

1. Heard Mr. N. Uddin, learned counsel for the petitioners and Mr. P. Borthakur, learned Additional Public Prosecutor (APP), Assam for the State.

2. The present revision petition under Section 397 read with Sections 401 and 482 of the Code of Criminal Procedure, 1973 is filed challenging the legality, propriety and correctness of the judgment and order dated 23.12.2011 passed by the learned Judicial Magistrate, 1st Class, Morigaon in connection with GR Case No. 1116/2008 arising out of Lahorighat P.S. Case No. 191/2008 convicting and sentencing the petitioners to undergo Rigorous Imprisonment (RI) for 3 (three) months and also to pay fine of Rs. 1,000/- each and in default of payment of fine, to undergo Simple Imprisonment (SI) for another 10 (ten) days for the commission of offence under Sections 323/34 IPC. Further, the challenge is against the judgment and order dated 19.04.2012 passed by the learned Sessions Judge, Morigaon in Criminal Appeal No. 03/2012 upholding the judgment and order dated 23.12.2011 passed by the learned Judicial Magistrate, 1st Class, Morigaon.

3. The prosecution story in nutshell is that on 01.10.2008 at around 08:30 pm, during the distribution of collected money for Imam of Barbar Masjid, the accused/petitioners for the reasons of a previous dispute attacked the father of the informant on his head and injured him. On the basis of such allegation, Lahorighat P.S. Case No. 191/2008 under Sections 143/341/325 IPC was registered and accordingly, the case was investigated. Subsequently, on completion of the investigation, the concerned Investigating Officer submitted charge-sheet against the accused/petitioners including the four other accused persons under Sections 143/323/34 IPC. Thereafter, the accused/petitioners appeared before the learned Court below on receipt of summons and the charges under Sections 143/323/34 IPC were explained to them, which they pleaded not guilty and accordingly, the trial was proceeded. Thereafter, the

learned Judicial Magistrate 1st Class, Morigaon by the judgment dated 23.12.2011 found the accused/petitioners herein guilty for the commission of offence under Sections 323/34 IPC and convicted & sentenced them as recorded herein above and the same was also affirmed by the learned Appellate Court vide the judgment and order dated 19.04.2012.

- 4.** Being aggrieved, the present petition is filed.
- 5.** Mr. Uddin, learned counsel for the petitioners, at the outset, submits that he shall not challenge the impugned order of conviction on merit and shall confine his submission in the appeal only in respect of the order of sentence.
- 6.** Mr. Uddin, learned counsel for the petitioners argues that the petitioners are entitled for the benefit under Sections 360/361 Cr.P.C. and under the Probation of Offenders Act, 1958 (hereinafter referred to as Act, 1958) which had not been granted by both the learned Courts below. Mr. Uddin, learned counsel for the petitioners further submits that the accused/petitioners have not been convicted previously for any offence and they are first time offenders.
- 7.** According to Mr. Uddin, learned counsel for the petitioners though the learned Trial Court ought to have considered for granting the benefit under the Act, 1958, however, the same was rejected only on the consideration of gravity of the alleged offence and at the same time, the learned Appellate Court even did not consider to grant benefit to the accused/petitioners. However, the learned Appellate Court categorically concluded that the incident happened as a result of clash between the parties for non-parting of money which had been collected for Imam of Barbar Masjid and accordingly, convicted and sentenced

the accused/petitioners acquitting the above named co-accused.

8. It is further contended by the learned counsel for the petitioners that the accused/petitioners are having a right of consideration under the Act, 1958 and therefore, the rights of the petitioners have been violated. It is argued that the learned Appellate Court did not invoke the provisions of the Act, 1958 nor the provisions of Sections 360/361 Cr.P.C while sentencing the accused/petitioners and the Trial court has not given any special reason in the impugned judgment and order of conviction and sentence for not giving benefit of such provision.

9. The learned Addl. Public Prosecutor, Mr. P. Borthakur, also fairly submits that the accused/petitioners are having a valuable right for proper consideration under the Act, 1958, however, the learned Trial Court has mechanically rejected such prayer taking note of the gravity of the offence.

10. I have heard the submissions advanced by the learned counsels for the parties.

11. This Court has perused the records of the learned Trial Court including the evidence of the witnesses as well as the judgments of the learned Courts below.

12. This Court after perusal of the materials available on record has also not found any patent error or illegality in the judgments. Therefore, this Court will now deal with the entitlement of the petitioners of the benefit under the Act, 1958.

13. It is by now well settled that Act, 1958 is a milestone in progress of modern liberal trend of reform in the field of Penology. It is the result of

recognition of the doctrine that the object of criminal law is more to reform the individual offender than to punish him. It was also held by the Hon'ble Apex Court in the case of **Ved Prakash Vs. State of Haryana** reported in **1981 1 SCC 447**, that sentencing an accused person is a sensitive exercise of discretion and not a routine or mechanical prescription acting on hunch. The Trial Court should collect necessary material to award a just punishment in circumstances. It was further held that the social background and the personal factors of the crime doer are very relevant in this regard.

14. In the case of **Sita Ram Paswan Vs. State of Bihar** reported in **AIR 2005 SC 3534**, the Hon'ble Apex Court has laid down certain principles for exercise of discretionary power under the Act and the consideration required. The Hon'ble Apex Court opined that while exercising the discretionary power under the Act, 1958, the Courts are to consider the circumstances of the case, the nature of offence and the character of the offender. While considering the nature of offence, the Court must take a realistic view of the gravity of the offence, the impact which the offence had on the victim. It was concluded by the Hon'ble Apex Court that the benefit available to the accused under Section 4 of the Act, 1958 is subject to the Limitation embodied in the provision and the word 'may' clearly indicates that the discretion is vested with the Court whether to release the offender in exercise of power under sections 3/4 of the Act, 1958, having regard to the nature of the offence, the character of the offender and overall circumstances of the case.

15. It was further held by the Hon'ble Apex Court that such power can be exercised by the Court even at the appellate or revisional stage or also by the Apex Court hearing appeal under Article 136 of the Constitution of India.

16. Now in the backdrop of the aforesaid settled propositions of law, let this Court consider the arguments advanced by the learned counsel for the parties.

17. This Court after perusal of the judgments of the learned Courts below, is of the opinion that the learned Sessions Judge, Morigaon did not make any consideration under the Act, 1958, inasmuch as, such consideration is a right of the accused and the duties of the Courts. A Court may not grant the benefit in the given facts of a case, however, consideration must be given. At the same time, the learned Trial Court opined that as the petitioners had committed the offence over a dispute regarding collection of money for Imam of Barbar masjid that too inside the said Masjid compound, extending the benefit of probation would sent out a wrong signal, therefore, the benefit of probation is not extended to the guilty persons. In the considered opinion of this Court, the learned Magistrate though considered to grant the benefit of probation but not in the proper perspective and on the touchtone of the parameters which are to be followed while granting the benefit under the Act, 1958.

18. In the case in hand, the offence was committed on 01.10.2008. The nature of offence cannot be said to be heinous in the given circumstances of the case, inasmuch as the learned Appellate Court itself concluded that the incident is a clash between the parties for parting of money collected for Imam of Barbar Masjid. It is also on record that there was a previous enmity between the parties. It is also asserted by the learned counsel for the petitioners that the petitioners have not committed any similar nature of offence or to say any offence prior to the incident or during pendency of this appeal till date. The learned APP has also submitted that he has no instruction as regards any criminal activities of the petitioners. This Court has also considered that the

accused/petitioners have suffered for almost 16 years litigating in the Court and facing trial, appeal and revision.

19. Considering the above stated facts and without entering into the merit of the impugned judgments and following the relevant provisions and the settled propositions of law and the period of lapse from the date of incident as well as the allegation and the evidence of the parties that previous enmity between the parties and also that the incident took place without any premeditation of mind and the punishment awarded for the commission of offence under Section 323 IPC is maximum 1 (one) year, this Court is of the considered opinion that this is a fit case where the benefit of provisions of the Probation of Offenders Act, 1958 should be given to the accused/petitioners by this Court in exercise of its revisional power. Accordingly, for the reasons recorded hereinabove, the petitioners, namely, (i) **Mamud Ali**, (ii) **Miraj Ali** and (iii) **Mazibur Rahman**, be given the benefit under the provisions of the Probation of Offenders Act, 1958 and accordingly, the sentence is modified to that effect and it is provided that instead of sending them to jail, they should be given the benefit of Section 4 of the Probation of Offenders Act, 1958.

20. Accordingly, it is directed that the petitioners, namely, (i) **Mamud Ali**, (ii) **Miraj Ali** and (iii) **Mazibur Rahman**, will file two sureties to the tune of Rs. 10,000/- each along with personal bond each before the learned Trial Court i.e., Judicial Magistrate, 1st Class, Morigaon and undertake to the effect that the petitioners shall maintain peace and good behaviour during the period of one year from today. The aforesaid bond be filed by the petitioners within a period of 2 months from the date of this judgment.

21. With the aforesaid, the criminal revision petition stands allowed.

22. LCR be returned back.

JUDGE

Comparing Assistant