

GAHC010007202011



2024:GAU-AS:12327

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

Case No. : Crl.Rev.P./289/2011

SADAGAR ALI'
S/O LT. MOIDAN ALI VILL- FULKAKATA PART-I, P.O. FULKAKATA, DIST.
DHUBRI, ASSAM.

VERSUS

THE STATE OF ASSAM

Advocate for the Petitioner : MR.A AHMED, MS. M BARMAN (AMICUS CURIAE),MR.G SAROWAR

Advocate for the Respondent : PP, ASSAM,

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

JUDGMENT & ORDER (ORAL)

Date:06.12.2024

1. Heard Ms. M. Barman, learned Amicus Curiae for the petitioner and Mr. P. Borthakur, learned Additional Public Prosecutor (APP), Assam for the State.

2. The present criminal revision petition under Section 401 read with Sections 397 and 482 of the Code of Criminal Procedure, 1973 is filed assailing the judgment and order dated 15.12.2009 passed by the learned Additional Chief Judicial Magistrate, Dhubri in connection with GR (DBB) Case No. 123/2002 convicting the petitioner under Section 406 IPC and sentencing him to undergo Simple Imprisonment (SI) for a period of one year and also to pay a fine of Rs. 500/- and in default of payment of fine, to undergo SI for another 1 (one) month. Further, the challenge is against the judgment and order dated 07.12.2010 passed by the learned Sessions Judge, Dhubri in Criminal Appeal being C.A.No. 15(4)/2009 whereby the learned Appellate Court affirmed the judgment and order dated 15.12.2009 by reducing the sentence of 1 (one) year of SI to 3 (three) months of SI and enhancing the fine of Rs. 500/- to Rs. 1000/-.

3. The prosecution story in a nutshell is that the complainant who was an Inspector of Food & Civil Supplies, Dhubri lodged an FIR at Dhubri Police Station alleging *inter alia* that on 10.05.2002 at about 05:00 pm, he along with other office personnel had inspected the premises of M/s Patamari Samabay Samity Ltd. situated at Newghat, Dhubri and they found anomalies with regard to stock of rice meant for mid day meal scheme. Further, the record of stock of rice maintained by the aforesaid Samity did not tally with the physical stock in the Godown which was differed by 91.73 qntl. of mid day meal rice and Annapurna rice and the accused/petitioner who was the In-charge Secretary of the said Samity could not give any satisfactory reply about the said anomalies. As such, the complainant seized the stock rice and all the relevant books of accounts and the records of the Samity. The complainant also seized some documents from the agents of the Samity and on verification of such documents, it was found that the Samity did not distribute the mid day meal rice to its agents against the monthly allotment of January, 2002 for distribution to the beneficiaries and the same was misappropriated by the accused/petitioner along with other office bearers with the intention for selling it in the black market. On the basis of such allegation, Dhubri P.S.Case No. 123/2002 under Sections 406/407/409/ 120(B) IPC read with Section 7 of the Essential Commodities Act, 1955 was registered and accordingly, the case was investigated. Subsequently, on

completion of the investigation, the concerned Investigating Officer submitted charge-sheet against the accused/petitioner including the two other accused persons under Sections 406/407/409 IPC. Thereafter, the accused/petitioners appeared before the learned Court below on receipt of summons and the charge framed under Section 406 IPC was explained to them, which they pleaded not guilty and accordingly, the trial was proceeded. Thereafter, the learned Additional Chief Judicial Magistrate, Dhubri by the judgment and order dated 15.12.2009 found the accused/petitioner herein guilty for the commission of offence under Section 406 IPC and convicted & sentenced him along with two others as recorded herein above and the same was also affirmed by the learned Appellate Court vide the judgment and order dated 07.12.2010 reducing the sentence of 1 (one) year of SI to 3 (three) months of SI and enhancing the fine of Rs. 500/- to Rs. 1000/-.

4. Being aggrieved, the present petition is filed.

5. Ms. Barman, learned Amicus Curiae for the petitioner, at the outset, submits that she shall not challenge the impugned order of conviction on merit and shall confine her submission in the appeal only in respect of the order of sentence.

6. Ms. Barman, learned Amicus Curiae for the petitioner argues that the petitioner is 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 to him by both the learned Courts below. Ms. Barman, learned Amicus Curiae for the petitioner further submits that the accused/petitioner had not been convicted previously for any offence and he is first time offender.

7. Ms. Barman, learned Amicus Curiae for the petitioner argues that 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/petitioner. It is further contended by the learned Amicus Curiae for the petitioner that the accused/petitioner is having a right of consideration under the Act,

1958 and therefore, the right of the petitioner has been violated. It is further 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/petitioner and the learned Appellate Court has not given any special reason in the impugned judgment and order of conviction and sentence for not giving the benefit of such provision.

8. The learned Addl. Public Prosecutor, Mr. P. Borthakur, also fairly submits that the accused/petitioner is 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.

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

10. 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.

11. 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 petitioner to the benefit under the Act, 1958.

12. It is well settled that the 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.

13. 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.

14. 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.

15. 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.

16. This Court after perusal of the judgment, is of the opinion that the learned Sessions Judge, Dhubri 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 declined to grant the benefit considering the gravity of offence. 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.

17. In the case in hand, the anomalies were found regarding misappropriation of stock of rice. The nature and manner of the offence committed cannot be said to be

heinous in the given circumstances of the case. The learned APP has also submitted that he has no instruction as regards any criminal activities of the petitioner subsequent to his conviction. This Court has also considered that the accused/petitioner has suffered for last 22 years litigating in the Court and facing trial, appeal and revision.

18. 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 lapse from the date of incident as well as the allegation and the punishment awarded for the commission of offence under Section 406 IPC, 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/petitioner by this Court in exercise of its revisional power. Accordingly, for the reasons recorded hereinabove, the petitioner, namely, **Sadagar Ali**, 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 him to jail, he should be given the benefit of Section 4 of the Probation of Offenders Act, 1958.

19. Accordingly, it is directed that the petitioner, namely, **Sadagar Ali**, will file one surety to the tune of Rs. 10,000/- along with personal bond before the learned Trial Court i.e., Additional Chief Judicial Magistrate, Dhubri and undertake to the effect that the petitioner shall maintain peace and good behaviour during the period of one year from today. The aforesaid bond be filed by the petitioner within a period of 2 months from the date of this judgment.

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

21. Registry to communicate this order to the learned Trial Court below so that the petitioner can be intimated as regards passing of this order inasmuch as no Advocate has represented him and it is not possible to learned Amicus Curiae to do the aforesaid exercise and this Court puts it on record its appreciation as regards assistance rendered by Ms. Barman, learned Amicus Curiae. Accordingly, Registry shall ensure that Ms.

Barman, learned Amicus Curiae be paid the legal fee, as payable to a Legal Aid Counsel as per the existing norms fixed by the Legal Services Authority.

22. LCR be returned back.

JUDGE

Comparing Assistant