

GAHC010020612023



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

Case No. : Crl.Pet./99/2023

DHRUBA JYOTI CHAKRABORTY
S/O- LATE JAGENDRA CHANDRA CHAKRABORTY, R/O- SUSHIL REKHA
NIVASH, HOUSE NO. 55, BYE LANE 7, NEAR H.P. PETROL PUMP, C/O-
SUSHIL KUMAR KALITA, 2ND FLOOR, P.O. DHIRENPARA, P.S. FATA SHIL
AMBARI, GUWAHATI-25, DIST. KAMRUP(M), ASSAM

VERSUS

KHANINDRA NATH DAS AND ANR
S/O- LATE JANARDAN DAS, R/O- NO. 2 GALIAHATI, BARPETA, P.O., P.S.
AND DIST. BARPETA, ASSAM

2:THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR
ASSA

Advocate for the Petitioner : MR S P DAS

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI**

ORDER

Date : 28.03.2024

Heard Mr. A.Islam, learned counsel for the petitioner and Mr. G Kaushik, learned counsel for the respondent No.1. Mr. B.B.Gogoi, learned Addl.P.P.appears for the respondent No. 2

2. The petitioner has filed an application under section 482 CrPC against the impugned order dated 25.01.2023 passed in Crl.Appeal No.04/2023 passed by the learned Sessions Judge, Barpeta.

3. The brief facts of the case is that respondent No. 1 as complainant filed a complaint case before the SDJM, Barpeta alleging an offence under Section 138 of the NI Act against the present petitioner. On request of the present accused/petitioner the respondent complainant paid a loan of Rs.5 Lakhs to the petitioner with an assurance that the petitioner will return the money within eight months. As money was not repaid in time, the complainant approached before the petitioner to return the said money and as a result of which, the petitioner handed over a cheque to the tune of Rs. 5 Lakhs to be drawn at Bank of India, Sub-Guwahati Branch. On presentation of the said cheque, the same was dishonoured on the ground of exceeds arrangement.

4. During trial, witnesses were examined by both the parties and after completion of trial, statement of the accused/petitioner was recorded under Section 313 CrPC. After hearing argument advanced by the learned counsel for the parties, the petitioner was convicted by trial court under Section 138 of the NI Act and sentenced to undergo simple imprisonment and further to pay a compensation of Rs. 7 Lakhs and in default of payment of compensation, further simple imprisonment for one month.

5. Being highly aggrieved and dissatisfied with the judgment dated 28.12.2022 passed by the learned SDJM, Barpeta in NI Case No.65/2022, the petitioner has preferred an appeal before the Sessions Judge, Barpeta vide Criminal Appeal No.04/2023.

6. It has been submitted by the learned counsel for the petitioner that at the

time of admitting the appeal, the appellate court in a very arbitrary manner has directed the petitioner to deposit 25 % of the awarded compensation within a period of 60 days which is in violation of Section 148 of the NI Act. It is further submitted that the present financial condition of the petitioner is not good as he has not received the salary for more than two years. According to the learned counsel for the petitioner, the order passed by the Sessions Judge, Barpeta is not as per provision of law which is liable to be set aside.

7. Learned counsel for the respondent No.1 on the other hand, submits that the order passed by the learned Sessions Court dated 25.01.2023 is as per provision of law. The learned Advocate for the respondent has also pointed out a case law which has been reflected in the order of the learned Sessions Judge in the case of *Surinder Singh Deswal & Ors –vs- Virender Gandhi* reported in (2019) 11 SCC 341 for interim compensation.

8. I have considered the submission of the learned counsel for the parties and I have also perused the order of the learned Sessions Judge, Barpeta dated 25.01.2023.

9. Section 148 of NI Act which deals with payment of interim compensation which reads as follows:-

“ S.148- Power of appellate court to order payment pending appeal against conviction –

(1) *Notwithstanding anything contained in the Code of Criminal Procedure, 1973, in an appeal by the drawer against conviction under section 138, the Appellate Court may order the appellant to deposit such sum which shall be a minimum of twenty percent of the fine or compensation awarded by the trial Court:*

Provided that the amount payable under this sub-section shall be in addition to any interim compensation paid by the appellant under section 143A.

(2) *The amount referred to in sub-section (1) shall be deposited within sixty days from the date of the order, or within such further period not exceeding thirty days as*

may be directed by the Court on sufficient cause being shown by the appellant.

(3) *The Appellate Court may direct the release of the amount deposited by the appellant to the complainant at any time during the pendency of the appeal:*

Provided that if the appellant is acquitted, the Court shall direct the complainant to repay to the appellant the amount so released, with interest at the bank rate as published by the Reserve Bank of India, prevalent at the beginning of the relevant financial year, within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the complainant.

10. On a bare perusal of the aforesaid provision, it reveals that at the time of admitting the appeal, the appellate court has power to allow interim compensation which shall be a minimum of 20 % of the fine or compensation awarded by the trial court. It is also provided that the amount referred to in Section 148 Clause-(1) shall be deposited within 60 days from the date of order of the appellate court.

11. As per order dated 25.01.2023 passed by the learned Sessions Judge, Barpeta which is reproduced as follows:-

“the appeal is admitted for hearing and the impugned order passed by the learned Court below is stayed with a direction to the appellant to pay 25% of the compensation amount as ordered by the learned trial court below within a period of 60 days from today to the respondent.”

12. On perusal of the order passed by learned Session Judge, Barpeta, it reveals that the order was passed in consonance with the provision of law.

13. In the result, the criminal petition is dismissed and disposed of accordingly. Stay order, if any, is hereby vacated.

JUDGE

Comparing Assistant