

GAHC010032662024



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

Case No. : I.A.(Crl.)/157/2024

BAHEJ UDDIN AHMED
S/O- LATE. EYAKAT ALI,
R/O- VILLAGE PALANGSUGURI, P.S- DHALIGAON, DISTRICT-
CHIRANG(BTAD), ASSAM. PIN-783385.

VERSUS

THE STATE OF ASSAM AND ANR
REP BY THE PP ASSAM

2:SHAHIDUL ISLAM
S/O LT. MAFIJUDDIN @ MAFIJUDDIN KHANDAKAR VILL SATIPUR P.S
DHALIGAON DIST CHIRANG BTAD ASSA

Advocate for the Petitioner : MS. R CHOUDHURY

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND**

ORDER

Date : 13-03-2024

1. Heard learned counsel Ms. S. Roy on behalf of learned counsel Ms. R. Choudhury for the applicant Bahej Uddin Ahmed. The learned Addl. PP Mr. K.

Baishya is present on behalf of respondent No. 1 and learned counsel Mr. M.H. Ahmed for the respondent No. 2.

2. This is an application for rectification of typographical error in the judgment and order dated 24.01.2024 in connection with Criminal Appeal No. 365/2018.

3. I have considered the submissions at the Bar with circumspection.

4. There was indeed an inadvertent mistake and the typographical error has to be corrected. A rectification of the typographical error will not change the nature of the judgment. It has already been held that the judgment and order of the learned trial Court does not stand the scrutiny of law and the judgment and order of the learned trial Court dated 03.01.2016 in connection with NICR 4 of 2015 was already set aside. Section 362 of the Cr.PC expounds when Court can correct a clerical or arithmetical error after the Court has signed the judgment or final order of disposing a case.

5. I have also relied on the decision of the Hon'ble Supreme Court in ***Ganesh Patel V. Umakant Rajoria***, reported in **(2022) 0 Supreme(SC) 1372**, wherein it has been observed that:-

“The respondent thereupon preferred an application for recall of the order dated 13.10.2017. The aforesaid order, it was stated, was passed in the absence of the respondent, and based on false information. The High Court recalled the order dated 13.10.2017 vide the impugned order dated 23.10.2021.

This application for recall of the order was maintainable as it was an application seeking a procedural review, and not a substantive review to which Section 362 of the Code of Criminal Procedure, 1973, would be attracted. [*Grindlays Bank Ltd. v. Central Government Industrial Tribunal & Ors. 1980 (supp) SCC 420*]. On the aspect of the difference between recall and review and when an order of recall can be passed reference can be made to ***Budhia Swain and Others v. Gopinath Deb and Others, (1999) 4 SCC 396.***”

6. In the instant case, it is submitted that this case was decided in favour of

the appellant but due to a typographical error in para 48 of the judgment and order dated 24.01.2024 in connection with Criminal Appeal No. 365/2018, the word 'appellant' was typed instead of 'accused' or 'respondent No. 2'.

7. I have scrutinised the judgment and order. There is indeed a typographical error in para 48. The word 'appellant' has been wrongly typed. Instead of 'appellant' the 'respondent No. 2' has to be typed and the prayer for correction of the typographical error is allowed.

8. It is thereby held that the paragraph No. 48 has to be typed as:-

“48. The order of acquittal dated 03.01.2016 in connection with Case No. NICR 4 of 2015 is hereby set aside. The respondent No. 2 (Sahidul Islam) is held guilty of offence u/s 138 of the N.I. Act. He is convicted u/s 138 of the N.I. Act and he is sentenced to a fine of Rs. 3,00,000/- . He is directed to pay the fine of Rs. 3,00,000/-, within 3 months from the date of this order and in default of payment of fine, the respondent No. 2 (Sahidul Islam) is directed to undergo Simple Imprisonment for 3 months. The respondent No. 2 is directed to appear before the learned trial Court immediately and pay the fine.”

9. The afore-mentioned rectified and corrected paragraph No. 48 captioned above will form a part of the judgment and order dated 24.01.2024 in connection with Criminal Appeal No. 365 of 2018.

10. Send a copy of this order to the learned trial Court.

I.A. is disposed of.

JUDGE

Comparing Assistant