

GAHC010218352013



2024:GAU-AS:12939

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

**Case No. : Crl.Rev.P./331/2013**

MD. BADRUT ZAMAN  
S/O LT. BABAR ALI R/O QUARTER NO.314 N.F. RAILWAY, P.O. and P.S.  
SILIGURI DIST. DARJEELING, WEST BENGAL.

VERSUS

THE STATE OF ASSAM

**Advocate for the Petitioner** : MR.A DASGUPTA, MR.B DAS,MR.S CHAKRABORTY

**Advocate for the Respondent** : , PP, ASSAM,

BEFORE

HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the Petitioner : Mr. A. Dasgupta, Sr. Advocate.

For the Respondents : Mr. P. Borthakur, Addl. PP, Assam

Date of Hearing : 19.12.2024

Date of Judgement : 19.12.2024

JUDGMENT & ORDER (ORAL)

1. Heard Mr. A. Dasgupta, learned Senior Counsel for the petitioner. Also heard Mr. P. Borthakur, learned Additional Public Prosecutor for the State respondent.
2. The petitioner herein is an employee of NF Railways and has preferred the present criminal revision petition under Section 401 read with Section 482 of

Cr.P.C. assailing a judgment dated 01.11.2011 passed by the learned Judicial Magistrate 1<sup>st</sup> Class, Rangia in CR case No. 112/2008, whereby the petitioner was convicted under Section 498(A) of IPC and he was sentenced to undergo Simple Imprisonment for one year and pay a fine of Rs. 5000/- and in default to undergo Simple Imprisonment for 3 months. The further challenge is the appellate judgement dated 19.06.2013 passed by the learned Additional Sessions Judge (FTC), Kamrup, Rangia in Criminal Appeal No. 76/2011 preferred by the present petitioner, whereby the judgment passed by the learned trial court was upheld.

3. The petitioner has filed the connected I.A being I.A. (CrI.) 1203/2024, with a prayer that the petitioner be granted benefit under Section 360/361 of the Cr.P.C. and Sections 4 and 12 of the Probation of the Offenders Act, 1958. Certain facts are brought on record in this regard which are recorded herein below:-

- I. On 16.01.2013, the respondent wife got remarried after "Talaque" given by the petitioner and such fact was brought to the notice before the learned Principal Judge, Family Court, Guwahati, in a proceeding filed by the wife under Section 125 of Cr.P.C.
- II. In the written statement filed before the learned Principal Judge, Family Court, she made a claim for entitlement of Mohr of amount of Rs. 1,01,000/-.
- III. Subsequently, on 16.08.2013, the petitioner and the respondent No. 2 made a joint prayer for withdrawal of the maintenance proceeding as the husband had already paid due amount arising out of maintenance.
- IV. Accordingly, on 16.08.2013, the learned Principal Judge, Family Court closed the maintenance proceeding on withdrawal.
- V. The petitioner is a railway employee and he is in the fag end of the

career.

VI. It is also brought on record that after divorce, both the parties got remarried and they are living individual happy family life and only thing remains is the payment of Mohr amounting to Rs. 1.01.000/-.

VII. The petitioner had sent a Demand Draft of Rs., 1,01,000/- drawn on State Bank of India, Maligaon Branch from its Bihata Chariali Branch bearing No. 728923, 0000020001: 000557" 16 dated 09.12.2024 dated 09.12.2014 and send it to the address of the respondent No. 2, through registered post A/D on 11.12.2024, however, the respondent wife has refused to accept the said draft.

4. Highlighting the aforesaid conduct of the accused/petitioner, Mr. Dasgupta, learned Senior Counsel submits that the petitioner may be granted benefit under Section 360/361 of the Cr.P.C. and Sections 4 and 12 of the Probation of the Offenders Act, 1958 (hereinafter referred to as Act, 1958).

5. Mr. Dasgupta, learned Senior Counsel argues that the petitioner is entitled for benefit under Section 360/361 Cr.P.C. and under the Probation of Offenders Act, 1958, which had not been granted by both the learned Courts below. Mr. Dasgupta, learned Senior Counsel further submits that accused petitioner has not been convicted previously for any offence and he is first time offender.

6. Mr. P. Borthakur, learned Additional Public Prosecutor for the State in his usual fairness submits that the petitioner had suffered in the meantime, he is in the fag end of the career and there is no instruction with his client as regards any criminal activities of the petitioner.

7. 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 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 material necessary 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.

8. 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 principle 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 the 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 section 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.
9. 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 Apex Court hearing appeal under Article 136 of the Constitution of India.
10. Now, in the backdrop of the aforesaid settled proposition of law, let this court consider the arguments advanced by the learned counsel for the parties.

11. In the case in hand, the offence was committed on 11.02.2008. The nature of offence cannot also be said to be heinous in the given circumstances of the present case. The victim and the accused have got remarried as recorded hereinabove. The accused has also offered the Mohr, paid the maintenance awarded, the wife had also withdrawn the maintenance case and in view of the aforesaid, in the considered opinion of this Court 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.
12. Accordingly, for the reasons recorded hereinabove, the petitioner be given the benefit under the provision of the Probation of Offenders Act, 1958 and accordingly, 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.
13. Accordingly, it is directed that the petitioner will file two sureties to the tune of Rs.20,000/- along with personal bond before the learned trial court i.e., the learned Judicial Magistrate 1<sup>st</sup> Class, Rangia 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.
14. In the given facts of the present case, this court is also of the opinion that the petitioner, be given benefit of Section 12 of the Act, 1958 and conviction should not affect his service/ pensionary benefit.
15. With the aforesaid, the revision petition stands allowed. LCR be returned back.

**JUDGE**

**Comparing Assistant**