

GAHC010200982023



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

Case No. : Crl.A 292/2023

UTPAL DEKA
S/O LATE LAKHINDRA NATH DEKA

R/O KACHAMARI
P.S.- NAGAON SADAR
DIST.- NAGAON
ASSAM
PIN- 782001.

VERSUS

THE STATE OF ASSAM AND ANR.
REP. BY THE P.P.
ASSAM.

2:CHANDAN BORAH
S/O MOHAN CHANDRA BORAH
R/O UDASHIN CHOWK
P.S.- KALIABOR
DIST.- NAGAON
ASSAM
PIN-

Advocate for : MR. S Ali
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM AND ANR.

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

Date : 30.04.2024

Heard Mr. S Ali learned counsel for the appellant and Mr. S Nawaz

learned counsel for the respondent No.2.

The present appeal is filed under section 374 (2) of the Cr.P.C, 1973 against the judgment and order dated 29.05.2023, passed by the learned Chief Judicial Magistrate, Nagaon in NI Case No.98/2019.

By the aforesaid judgment and order, the appellant has been convicted under section 138 of the N.I. Act and he is sentenced to pay a fine of Rs.20,00,000.00 in default to undergo simple imprisonment for five years.

Sub-section (2) of section 374 of the Cr.P.C provides that any person convicted on a trial held by a Sessions Judge or Additional Sessions Judge or on a trial held by any other court in which a sentence of imprisonment is for more than seven years is passed, then appeal shall lie to the High court. Sub-section (3) of section 374 of the Cr.P.C prescribes that any person convicted on trial by any Metropolitan Magistrate or Assistant Sessions Judge or Magistrate of first class or of the second class, the appeal shall lie to the court of Sessions.

As discussed hereinabove, in the present case the sentence passed by the learned CJM, Nagaon is to pay a fine of Rs.20,00,000.00 in default to undergo Simple imprisonment for five years and therefore, the appeal shall lie under sub-section (3) of section 374 Cr.P.C before the jurisdictional Sessions Court and not before this court. However, inadvertently the appeal was registered by the registry as well as the appeal was admitted by a co-ordinate bench under its order dated 08.08.2023.

At this stage the learned counsel for the appellant submits that in view of the aforesaid defect of jurisdiction, he may be allowed to withdraw the present appeal and prefer the same before the appropriate court inasmuch as the present appeal was filed inadvertently.

Considering the matter in its entirety, the prayer is allowed.

Accordingly, the appeal stands closed on withdrawal with a liberty to the appellant to prefer appeal before the appropriate court having jurisdiction.

The period spent in this court may be excluded for the purpose of condonation of delay.

Registry is directed to return back the certified copy of the judgment and sentence in question. Accordingly, the criminal appeal stands closed.

JUDGE

Comparing Assistant