

CASE NO.:
Appeal (crl.) 1166 of 2006

PETITIONER:
Satin Chandra Pegu

RESPONDENT:
State of Assam

DATE OF JUDGMENT: 15/11/2006

BENCH:
ARIJIT PASAYAT & LOKESHWAR SINGH PANTA

JUDGMENT:
J U D G M E N T
(Arising out of SLP (CRL.) No.4590 of 2006)

ARIJIT PASAYAT, J.

Leave granted.

Challenge in this Appeal is to the order of a learned Single Judge of the Guwahati High Court dismissing the Criminal Revision filed by the appellant.

The background facts in a nutshell are as follows:

The appellant was convicted for an offence punishable under Section 409 of the Indian Penal Code, 1860 (in short the 'IPC') by learned sub-Divisional Judicial Magistrate, Jonai. The allegation against the appellant was that he had misappropriated a sum of Rs.91,006/-. While taking over charge as Deputy Inspector of Schools on 12.11.1991, he had received cash amounting to Rs.91,796/-, as per the accounts maintained. When the cash was physically verified only Rs.790/- was found, and it was, therefore, inferred that he had committed misappropriation of cash. He faced trial for alleged commission of offence punishable under Section 409 IPC. Questioning his conviction and sentence of two years with fine as imposed by the trial Court, an appeal was filed before the Sessions Court. Learned Sessions Judge, Dhemaji dismissed the Criminal appeal upholding the conviction and the sentence imposed. A Criminal Revision in terms of Section 397 read with Section 401 and Section 482 of the Code of Criminal Procedure, 1973 (in short the 'Cr.P.C.') was filed. When the matter was taken up on 12.5.2006, none appeared for the petitioner. Therefore, learned Single Judge dismissed the revision petition after hearing learned counsel for the State.

In support of the appeal, learned counsel for the appellant submitted that learned counsel who was appearing for the appellant in the High Court had been appointed as a counsel for the State and, therefore, could not have appeared for the appellant. Unfortunately, this position was not brought to the notice of the appellant and, therefore, the appellant should not be made to suffer. It is pointed out that the appellant has always pursued the remedies and there was

never any negligence on his part.

In response, learned counsel for the State submitted that though the appellant had not been represented by a counsel, learned Single Judge elaborately dealt with the factual and legal position after hearing learned counsel for the State and perusing the records.

It has not been disputed that the learned counsel who was appearing for the appellant in the Criminal Revision had been appointed as a counsel for the State and could not have appeared for the appellant. There is also no material to show that the appellant after having knowledge of such appointment of his counsel failed to appoint another lawyer to conduct the case before the High Court.

In view of this peculiar circumstances, it would be in the interest of justice to set aside the impugned order of the High Court and remit the matter to it for fresh hearing. To avoid unnecessary delay, we direct that the matter shall be listed before an appropriate Bench on 11.12.2006 and learned Chief Justice of the High Court shall pass necessary orders in that regard. It is undertaken by learned counsel for the appellant that another counsel shall be engaged to appear for the appellant before the High Court before the aforesaid date. Since the matter was pending before the High Court for nearly seven years, we request the High Court to explore the possibility of disposal of the Criminal Revision as early as practicable. Learned counsel for the appellant stated that an application for bail shall be filed before the High Court. Needless to say that if such application is filed, the same shall be dealt with in accordance with law.

The appeal is disposed of accordingly.

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