

GAHC010018592021



2026:GAU-AS:5592

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

Case No. : CrI.Rev.P./107/2018

RANA GOSWAMI
S/O LATE NILAKANTA GOSWAMI
R/O RAJABARI
JORHAT
DIST. JORHAT
ASSAM
785015

VERSUS

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

2:GOLAP BAILUNG
SUB INSPECTOR AND INVESTING OFFICER
JORHAT POLICE STATION
JORHAT
ASSAM
PIN-785006

Advocate for : MR. D BARUAH
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM AND ANR.

**BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN**

Advocate for the petitioner : Mr. Z. Kamar (Sr. Adv.),
Mr. P.D. Choudhury.

Advocate for the respondents : Mr. P. Borthakur (Addl. P.P.)

Date on which judgment is reserved : **02.02.2026**

Date of pronouncement of judgment : **23.04.2026**

Whether the pronouncement is of the operative part of the judgment? : N/A

Whether the full judgment has been pronounced? : Yes

JUDGMENT & ORDER (CAV)

Heard Mr. Z. Kamar, learned Senior Advocate, assisted by Mr. P.D. Choudhury, learned counsel for the petitioner. Also heard Mr. P. Borthakur, learned Addl. P.P. for the respondents.

2. The legality, propriety and correctness of the order dated 17.02.18, passed by the learned Chief Judicial Magistrate (C.J.M.), Jorhat in Jorhat P.S. Case No. 630/2016, under Sections 120(B)/171(C)/197/469/499/34 of the Indian Penal Code (IPC), are challenged in this petition under Section 401 of the Criminal Procedure Code. Further, it is also prayed for directing the Jorhat police to conduct further investigation of the case in terms of the provisions of Section 173(8) of the Code of Criminal Procedure (Cr.P.C.).

3. The background facts leading to filing of the present petition, are briefly

stated as under:-

“The petitioner is a social worker and he is connected with various social activities. He was a Member of the Assam Legislative Assembly from Jorhat Legislative Assembly Constituency for the period from 2006-2011 and 2011-2016. He has acquired status and dignity in the society and he has been maintaining an impeccable character. On 01.04.16, the petitioner lodged an FIR (ANNEXURE-1) before the Jorhat Police Station, stating inter alia that amongst others that 4 accused persons, by forging the educational qualification Certificates and Mark Sheet of the petitioner, issued by the Dibrugarh University, have hatched a political conspiracy and trying to provide a political mileage to a particular political party in the eve of the Assembly Elections, by circulating the aforesaid forged documents amongst the people. And it was done to undermine the image of the petitioner. They had shown the fabricated certificates to the people and to the Press stating that the petitioner did not pass B.Com. Examination held in the year 1981. The accused persons had also arranged a meeting at the Press Club, Jorhat on that day with an attempt to get the matter widely circulated on the eve of casting of vote on 04.01.16, with an intention to damage the image of the petitioner and help the political party whom they support. Accordingly, the petitioner has requested the Police to search and seize all the forged documents already circulated and in the custody of the accused persons and to punish them as per the provisions of law. The petitioner has also enclosed all the relevant educational qualification documents along with the FIR.

Upon the said FIR, the Officer-in-Charge of Jorhat Police Station

had registered a case, being Jorhat P.S. No. 630/16, under Sections 120 (B)/171 (C)/197/469/499/34 of the Indian Penal Code and investigated the same. However, on completion of investigation, police submitted a Final Report, under Section 173 of Cr. P C, being Final Report No. 1527/2017, dated 16.11.2017, (ANNEXURE-2). And along with the Final Report, the Investigating Officer had filed a Non-F.I.R. Case, No. 18/17 (Part-III), stating that during the investigation of Jorhat P.S. Case No. 630/2016, the police after verification of the record of the Dibrugarh University relating to informant/petitioner, it was found that the informant/petitioner did not pass the B.Com. Examination, and the Mark Sheet enclosed is a false document. Thereafter, the Final Report was submitted before the Court of the learned CJM, Jorhat.

Thereafter, the learned C.J.M., Jorhat, has issued a notice to the petitioner directing him to file objection, if any, as regard acceptance of the Final Report. On receipt of the aforesaid notice, the petitioner had filed his objection on 01.02.18, (ANNEXURE-8), stating inter alia that the Final Report submitted by the I.O. is the outcome of a defective investigation and non application of mind of the I.O. during the investigation of the case and the investigation of the case was done in a perfunctory manner. Furthermore, the I.O. has submitted the Final Report against the FIR, in a very casual & mechanical manner and in a haste with a political mandate, by which the petitioner has been made a scapegoat. He had passed his B.Com. (Two Year Degree Course) from Dibrugarh University in the year 1981, which commenced from 6.4.1981. The Controller of Examination, Dibrugarh University had

issued Mark Sheet to the petitioner showing the detailed marks secured by him in all papers including the marks for the paper "English" as 21 and "internal assessment" as 9 and the total being 30 marks and the result has been mentioned as "P" i.e. passed. In addition, the J. B. College had issued a Provisional Pass Certificate to the informant/objector on 26.09.1981, certifying that the petitioner had passed the B.Com (Two Year Course) Examination, 1980 from their College, under Roll No. 858 in Pass Course with the subjects mentioned therein. The J.B. College, Jorhat, in response to the Legal Notice dated 07.04.2016, issued by the petitioner, furnished reply dated 30.04.2016, stating clearly that the "the result of B.Com. Examination held in 1980, was declared in 1981 and as per result-sheet, Sri Rana Goswami, bearing Roll No. 858 was declared passed". And that the I.O. of the case did not verify the record lying before the J.B. College, Jorhat, during the investigation period and also no statement of the Principal of J.B. College, Jorhat or any officials of the College during the period of investigation, in connection with Jorhat P.S. Case No. 630/2016 was recorded. And during the investigation, the I.O. had never contacted him and neither approached him to know about the facts and aspects of the case and the I.O. had also never recorded his statements and also not verified the original documents of the informant/objector in respect of the case, and accordingly, the I.O. in a routine manner concluded the investigation and submitted Final Report in a haste and as such the Final Report should not have been accepted.

He had also filed a Title Suit being T.S. No. 49/2017 before the Court

of the learned Civil Judge, Jorhat praying before the Court to pass a decree for:-

- (a) Declaration that the result of the informant/objector (plaintiff) as per result sheet dated 11.09.1981 issued by the Dibrugarh University under the signature of the Defendant No.3 i.e. the Controller of Examination, Dibrugarh University to different colleges under Dibrugarh University including the Proforma Defendant No. 4 J.B. College, Jorhat and the informant/objector's/ Plaintiff's Mark Sheet under the signature of the said defendant No. 3, sent to the said college and that the result of the plaintiff as disclosed in the result sheet and also in the mark sheet are correct and that the informant/objector/plaintiff has passed his B.Com examination held in 1981 and that the B.com Degree he holds is a valid one, and
- (b) A decree of declaration that the information submitted by the office of the Defendant No.2 i.e. the Registrar, Dibrugarh University vide letter No. DU/RG/PILO/B/5001, dated 28.03.2016, in response to RTI application by the applicant Pratap Jyoti Dutta of Digambar Road, Jorhat based on tabulation sheet was wrong, etc.
- (c) Permanent injunction against the Dibrugarh University to correct their tabulation sheet and to issue a regular B.Com pass certificate to the informant/objector/plaintiff.

And during the investigation of the case, the I.O. did not verify

about the said Title Suit which is pending before the learned Court of the Civil Judge, Jorhat.

Despite the aforesaid objection, being filed by the petitioner, the learned C.J.M., Jorhat vide impugned order dated 17.02.2018, (ANNEXURE-9) had accepted the Final Report submitted by the IO in Jorhat P.S. Case No. 630/2016, with an observation that the petitioner did not apply for provisional pass certificate as he had not passed the B.Com. examination and also recorded a finding that as the accused collected the information from the Dibrugarh University under RTI, there is no chance to manipulate the documents and held the investigation to be proper.”

4. Being aggrieved, the petitioner has preferred the present petition under Sections 401 and 397 of Cr.P.C, with the prayer aforesaid, on following grounds:-

- (i) The learned trial court, while passing the Order dated 17.02.2018, had failed to consider that the Authorities of the J.B. College, Jorhat had admitted the facts to the effect that the petitioner had passed the B.Com. Examination from their College and the same is supported by the result sheet and mark sheet issued in favour of the Petitioner.
- (ii) Further, the learned trial court had also failed to consider that the T.S. No. 49/2017, filed by the petitioner for declaration is pending before the appropriate Civil Court and as such, the learned C.J.M. Jorhat had erroneously accepted the Final Report and passed the impugned order dated 17.02.2018, thereof, in

Jorhat P.S. Case No. 630/2016.

- (iii) The learned trial court had arrived at a perverse finding, while passing the impugned order, dated 17.02.18, in Jorhat P.S. Case No. 630/2016, in as much as it had heavily relied on the point that the petitioner did not apply for the Pass Certificate from the Dibrugarh University and therefore, came to a conclusion that the educational qualification of the petitioner, as claimed by him, cannot be believed.
- (iv) The learned trial court had failed to appreciate that during the investigation of the case, the I.O. of the case had never contacted him to know about the factual aspects of the case, and the I.O. had also never recorded his statement and also not verified the original documents of the petitioner in respect of the case and the I.O., in a routine manner, had concluded the investigation and submitted the Final Report and despite objection, the Final Report has been accepted by the learned Court below.
- (v) Further, the learned trial court had considered the matter one sided, without taking the view of the objection filed by the petitioner and overlooked the mistake committed by the I.O. during the investigation by not recording the statement of the J.B. College Authority, Jorhat, since their statement is vital in aspect of the aforesaid case.
- (vi) The learned trial court had failed to take into consideration of the facts that had been stated in the objection petition and wholly

and solely relied upon the case diary, while passing the impugned order dated 7.02.2018, and as such the findings of the learned C.J.M. Jorhat "that the investigation does not require interference of this Court. Accordingly, I accept the FR so filed by the I/O against the accused persons" is erroneous, perverse, and not borne out of records and therefore, the impugned order is liable to be set aside.

5. Mr. Kamar, learned Senior Counsel for the petitioner submits that the investigation, upon the FIR lodged by the petitioner, had not been carried out by the Investigating Officer in a proper manner. **Firstly**, Mr. Kamar has pointed out that the I.O. had examined only three witnesses, but the I.O. had not examined the Principal of J.B. College, who had issued the Certificate and the Mark Sheet to the petitioner. **Secondly**, he has pointed out that the statement of the petitioner was not recorded by the I.O., though there appears to be one statement made by the petitioner, as per the case diary produced by the learned Addl. Public Prosecutor. **Thirdly**, he has pointed out that the I.O. had not seized any document from the J.B. College, instead the I.O. has perfunctorily carried out the investigation and submitted Final Report. **Fourthly**, Mr. Kamar submits that the learned CJM, Jorhat, had accepted the final report without issuing any notice to the petitioner and without examining the petitioner. **Fifthly**, Mr. Kamar submits that without taking note of the fact that the petitioner had instituted one title suit being, T.S. No. 49/2017, before the Court of the learned Civil Judge, Jorhat, and that the Civil Court is binding upon the Criminal Court.

5.1. Under the aforementioned facts and circumstances, Mr. Kamar has

contended to set aside the impugned order passed by the learned CJM, Jorhat, accepting the Final Report submitted by the I.O. and to direct the I.O. to conduct further enquiry.

5.2. In support of his submission, Mr. Kamar has referred to a decision of Hon'ble Supreme Court in the case of **Shanti Kumar Panda vs. Shakuntala Devi**, reported in **(2004) 1 SCC 438**.

6. Per contra, Mr. Borthakur, learned Addl. Public Prosecutor submits that having registered the case, upon the FIR lodged by the petitioner, the I.O. had examined the petitioner and also the officials from Dibrugarh University, and also the accused persons, against whom the FIR was lodged, and also seized one Mark Sheet, issued by the Dibrugarh University, pursuant to one RTI application filed by the accused persons in the FIR lodged by the petitioner. Mr. Borthakur also submits that then having found no material supporting the allegations made by the petitioner, the I.O. had returned the case in Final Report. And the learned CJM, Jorhat, thereafter, had issued notice to the petitioner, and considered the objection filed by him and only thereafter, it had accepted the Final Report. Mr. Borthakur also submits that there is no illegality or impropriety in the impugned order, so passed by the learned CJM, requiring any interference of this Court, and therefore, he has contended to dismiss the petition.

7. Having heard the submissions of learned Advocate of both sides, this court has carefully gone through the petition and the documents placed on record and the impugned order, dated 17.02.2018, so passed by the Learned C.J.M., Jorhat in Jorhat P.S. Case No. 630/2016. Also this court has carefully gone through the judgments referred by learned counsel for the petitioner.

8. Before a discussion is directed to the issues raised by Mr. Kamar in the present petition, this court deems it necessary to extract the impugned order herein below to deal with the issues, with greater precision.

ORDERS

Date 17/02/2018,

Ld Counsel for the petitioner/informant is present by filing hazira.

Today is fixed for necessary order on the objection of the informant to acceptance of the FR.

I have meticulously perused the objection of the informant and also the case diary and the documents of this case. Case is registered u/s 120(B)/171(c)/197/469/499/34 IPC and the allegations against the accused persons are that they have forged documents showing that he never passed the B.Com. Examination from Dibrugarh University. It is further alleged by the informant that his reputation has been harmed by the accused in front of people ruining his political career.

The I/O investigated this case accordingly, and it appears from the case diary that the I/O examined the informant along with two other witnesses of Dibrugarh University who issued to him the Tabulation Certificate of mark sheet of B.Com. of the informant. It is found in the case diary that the I/O, after matching the tabulation certificate with the original mark sheet of the informant, found discrepancies in numbers (marks) and he also found that the informant had never applied for provisional pass certificate from the Dibrugarh University as he did not pass the B.Com. Examination.

On the other hand it also appears from the case diary that the accused had collected the information against the informant through the Right to Information Act at Dibrugarh University and there is no chance to manipulate the documents against the informant.

I have therefore found the investigation to be proper and is of the view that the investigation does not require interference of this Court. Accordingly, I accept the FR so filed by the I/O against the accused persons. Case stands disposed of.

Sd./

Chief Judicial Magistrate, Jorhat

9. It also appears from the scanned copy of the record of the learned court below in Jorhat P.S. Case No. 630 of 2016, corresponding G.R. No. 896/16, that the case record and case diary of Jorhat P.S. case No. 630 of 2016 under Sections 120(B)/171(C)/197/469/499/34 IPC, was put up before the learned CJM, Jorhat on 18.11.2017. The learned CJM, Jorhat then found that the I.O. of the case had filed Final Report against 4 accused persons stating that during investigation he found this case to be false, under the registered sections and as per direction, he had filed Final Report u/s 120(B)/171(C)/197/469/499/34 IPC. It is also stated by the I.O. that he is also filing a counter prosecution u/s 211 IPC against the informant. Thereafter, vide order dated 18.11.2017, the learned CJM, Jorhat had issued notice to the informant for objection, if any, in acceptance of the Final Report. Also the learned Chief Judicial Magistrate had directed to register a complaint case u/s 211 IPC against accused/informant Rana Goswami and posted the case on 02.01.2018, for report/appearance/objection.

9.1. Further, it appears that on 02.01.2018, the informant/ petitioner herein had filed one petition before the court of learned CJM, Jorhat praying for time to file written objection and the same was allowed by the learned CJM, Jorhat and posted the case on 01.02.2018. And, on 01.02.2018, the learned counsel for the petitioner had filed objection to the acceptance of the Final Report, so filed by the I.O. In that view of the matter, the fourth limb of argument of Mr. Kamar that the learned CJM, Jorhat, had accepted the Final Report without issuing any notice to the petitioner, is not based upon any material on record and it deserves repudiation at the very threshold.

10. It also appears from the original Case Diary, so produced before the court that the FIR was filed by the petitioner herein on 01.04.2016 and upon registering Jorhat P.S. case No. 630 of 2016, under Sections 120(B)/171(C)/197/469/499/34 IPC on the same day, the I.O. had recorded the statement of petitioner. That being so, the second limb of argument of Mr. Kamar, learned counsel for the petitioner, that the statement of the petitioner was not recorded by the I.O., though there appears to be one statement made by the petitioner, as per the case diary produced by the learned Addl. Public Prosecutor, got no legs to stand upon and it deserves to be repudiated and accordingly, the same stands repudiated.

10.1. It is worth mentioning in this context that Section 80 of the Indian Evidence Act provides that when a document, purports to be a record of a court or public officer and is produced as such, the court presumes its genuineness, that the seal, stamp, or signature is genuine, and that the person signing it held the judicial or official character claimed. The court presumes that official acts, such as the signature or seal of a public officer appearing on a document, were done by the officer in their official capacity. This presumption is applicable

unless evidence is presented to the contrary.

11. The I.O. here in this case, during investigation, had seized one Photo Copy of the Original Tabulation Sheet from the Controller of Examination, Dibrugarh University, on 16.11.2017. It also appears that the I.O. had not seized any of the documents which the petitioner had enclosed with the FIR dated 01.04.2016. Notably, the petitioner had enclosed following documents with the FIR:-

- (1) Mark sheet (old course) of High School Leaving Certification, 1976 bearing Roll Jorhat No.925
- (2) Admit Card issued by Dibrugarh University for B.Com (Two years degree Course) Examination of 1980 commence on 6th April, 1981.
- (3) Mark sheet of B.Com Examination issued by Dibrugarh University Roll No. 858.
- (4) Pass Certificate for B.Com. Examination issued by Jagannath Barooah College, Jorhat
- (5) Result of B.Com. (Two Year Degree Course) Examination, 1980 held in April/May, 1981.

11.1. But, it is well settled that an investigating officer is not bound to seize every document produced by the complainant during the investigation. He has the discretion to decide which document is relevant and necessary for the investigation, subject to the provisions of the Code of Criminal Procedure (Cr.P.C.) and guidelines on collection of evidence. He is also not a receptacle for every paper the complainant produces; he may accept copies or merely note the said document in the case diary.

11.2. Even, looking at the documents, so enclosed with the FIR, by the

petitioner, one would find that the document No. (1) i.e. the Mark sheet (old course) of High School Leaving Certification, 1976 of the petitioner, is not at all relevant for enquiring about the allegation of fabrication of B.Com. Pass Certificates as well as his Mark Sheet issued by the Dibrugarh University and in respect of political conspiracy. Similarly, document No. (2) i.e. Admit Card issued by Dibrugarh University for B.Com (Two years degree Course) Examination of 1980, is also not required for the investigation of the allegation made in the FIR, as because it will only indicate that the petitioner appeared in the said examination, when it is no body's case that the petitioner had not appeared in the said examination.

11.3. However, the document No. (3) i.e. the Mark sheet of B.Com Examination issued by Dibrugarh University Roll No. 858, and document No. (4) i.e. the Pass Certificate for B.Com. Examination issued by Jagannath Barooah College, Jorhat and the document No. (5) i.e. Result of B.Com. (Two Year Degree Course) Examination, 1980 held in April/May, 1981 appears to be relevant. But, it appears that though the I.O. had not seized the aforesaid documents yet, from the Final Report it becomes apparent that the I.O. had taken the said documents to the University and verified the same with the University authority and found the document No. 3 i.e. the Mark Sheet of B.Com. Examination ,issued by Dibrugarh University incorrect and the allegations levelled in the FIR are false and thereafter, he had seized one Photo Copy of the Original Tabulation Sheet from the Controller of Examination, Dibrugarh University on 16.11.2017, which has direct bearing on the investigation of the case. This being the position, omission to seize the document No. 3, 4 and 5 by the I.O. caused no dent to the investigation. Under the given facts and circumstances, the submission of Mr. Kamar has left this

court unimpressed.

12. Moving forward to the other limb of submission of Mr. Kamar regarding non-examination of the Principal of J.B. College, who had issued the Certificate and the Mark Sheet to the petitioner is concerned, it appears that indisputably, the I.O. had not examined the Principal. But, it is not in dispute that the examination was conducted by the University and the University is the final authority to declare as to whether a student has passed or failed and also it is the authority to issue Mark Sheet and Certificate to the students. And since the I.O. had examined the Controller of the Examination and recorded his statement, non-examination of the Principal of the J.B. College also had no bearing in the outcome of the investigation.

13. Coming to the last and fifth submission of Mr. Kamar that the learned CJM, Jorhat, had failed to take note of the fact that the petitioner had instituted one title suit being, T.S. No. 49/2017, before the Court of the learned Civil Judge, Jorhat, and that the finding of the Civil Court is binding upon the Criminal Court, this court is of the view that the allegations levelled in the FIR relates to fabrication of false document by hatching a conspiracy by the persons mentioned therein. On the other hand the relief being sought for in the Title Suit No. 49/2017, filed before the Court of the Civil Judge, Jorhat are as under:-

- 1) Decree for declaration that the result of the informant/petitioner as per result sheet dated 11.09.1981, issued by the Dibrugarh University under the signature of the Defendant No.3 i.e. the Controller of Examination, Dibrugarh University to different Colleges under Dibrugarh University including the Proforma Defendant No.4, Jagannath Barooah College, Jorhat and the informant/petitioner's Mark Sheet, under the signature of the said

defendant No.3 sent to the said college and that the result of the plaintiff as disclosed in the result sheet and also in the mark sheet are correct and that the informant/petitioner has passed his B.Com examination held in 1981 and that the B.com Degree he holds is a valid one.

- ii) A decree of declaration that the information submitted by the office of the defendant No.2 I.e. the Registrar, Dibrugarh University by letter No. DU/RG/PILO/B/5001 dated 28.3.2016 in response to RTI application by the applicant Pratap Jyoti Dutta of Digambar Road Jorhat based on tabulation sheet was wrong,
- iii) For a permanent injunction against the Dibrugarh University to correct their tabulation sheet and to issue a regular B.Com pass certificate to the informant/petitioner.

13.1. Thus, the allegations levelled in the FIR and also the relief being sought for in the Title Suit, though appears to be interrelated yet, not interdependent. This court also gone though the decision referred by Mr. Kamar in **Shanti Kumar Panda(supra)** and is of the view that the said decision proceeds on its own facts and not applicable in all force to the given facts and circumstances herein this case. The proposition, so referred by Mr. Kamar was laid down in a proceeding under Section 145 Cr.P.C. where the courts usually consider possession of the disputed land by the parties to the proceeding and the title has always to be adjudicated by Civil Courts and such circumstances Hon'ble Supreme Court has held that the finding of Civil Court is binding upon the parties. And that being so, it would not advance the argument of Mr. Kamar.

13.2.Notably, the criminal court decides criminal liability independently and

may convict or acquit based on the evidence before it, while the civil court finding only controls the civil consequences such as who owns what, who is entitled to mesne profits, etc. It is well settled that there is no statutory rule that a finding in one proceeding is final and binding in the other, though a civil court decision may be relevant evidence if it satisfies conditions in Sections 40–43 of the Evidence Act.

13.3. Whether the judgement of the Civil Court, is binding, on the Criminal Court, was dealt with by Hon'ble Supreme Court in the case of [K.G. Premshanker Vs. Inspector of Police and another](#), reported in (2002) 8 SCC 87 wherein it has been held that the decision of the Civil Court, shall be relevant, if conditions of any of [Sections 40](#) to [43](#), are satisfied. But, it cannot be said, that the same would be conclusive, except as provided in [Section 41](#). If the judgement, order or decree of Civil Court, is relevant, as provided, under [Sections 40](#) and [42](#), then Court has to decide, to what extent, it is binding, with regard to matters decided therein. It has also been held that, therefore, in each case, it has to be ascertained, whether judgment, decree or order, is relevant and if so, its effect. In the criminal case, the prosecution was required to prove, beyond a reasonable doubt, by leading cogent and convincing independent evidence that the sale deeds dated 31.01.1989 executed by Raj Kaur were the result of fraud, forgery and misrepresentation. On the other hand the civil case was required to be decided on the preponderance of evidence. Merely, on the basis of the Civil Court judgements, it could not be conclusively held, in the criminal trial, that the sale deeds were the result of fraud, forgery and misrepresentation. Under these circumstances, the judgement of the Civil Court cannot be said to be binding, on the Criminal Court, for the purpose of deciding the guilt of the accused, in a criminal case.

14. Thus, having examined the impugned order, dated 17.02.2018, so passed by the CJM, Jorhat, this court is of the view that the petitioner herein has failed to demonstrate that the same suffers from any infirmity or illegality, requiring any interference of this Court.

15. In the result, this court finds this petition devoid of merit and accordingly, the same stands dismissed leaving the parties to bear their own costs. Send down the record of the learned court below forthwith.

J U D G E

Comparing Assistant