

**2023 LiveLaw (SC) 177**

**IN THE SUPREME COURT OF INDIA**

**MANOJ MISRA; J., ARAVIND KUMAR; J.**

**Criminal Appeal No(s). 1562/2017; 01-03-2023**

**GAUHATI HIGH COURT BAR ASSOCIATION *versus* THE STATE OF ASSAM & ORS.**

**Code of Criminal Procedure 1973- Section 438 - Is it necessary to exhaust remedy available in Sessions Court before approaching High Court?- Whether the High Court exercising jurisdiction under Section 438 has discretion not to entertain such an application on the ground that the applicant must first apply to the Court of Sessions - SC to consider.**

*For Appellant(s) Mr. Manish Goswami, Adv. Mr. Rameshwar Prasad Goyal, AOR Mr. Arun Adlakha, Adv. Mr. C.M. Angadi, Adv.*

*For Respondent(s) Ms. K. Enatoli Sema, AOR Ms. Limayinla Jamir, Adv. Mr. Amit Kumar Singh, Adv. Ms. Chubalemla Chang, Adv. Mr. Prang Newmaj, Adv. Mr. Abhimanyu Tewari, AOR Ms. Eliza Bar, Adv. Mr. Shuvodeep Roy, AOR Mr. Sai Shashank, Adv. Mr. Deepayan Dutta, Adv.*

**ORDER**

The issue raised in this appeal is whether the High Court exercising jurisdiction under Section 438 of the Code of Criminal Procedure, 1973 has discretion not to entertain such an application on the ground that the applicant must first apply to the Court of Sessions.

In our view, a decision on the aforesaid issue would have wide ramifications.

Therefore, at the oral request of the learned counsel for the appellant, we deem it appropriate to implead Union of India as a respondent in this appeal.

Let notice of the appeal be served on the office of the learned Solicitor General of India, returnable after six weeks.

In the meantime, liberty is granted to serve the Advocate-on-Record representing the Central Agency.

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