

GAHC010032222023



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

Case No. : Crl.Pet./157/2023

BEGUM DIMPAL SULTANA
(PROPRIETOR, DYNAMIC ENTERPRISE,
AGED ABOUT 34 YEARS,
W/O RUHUL KUDDUS,
R/O VILL- RAKHALTARI, P.O. AND P.S. SAPATGRAM,
DIST. DHUBRI, ASSAM

VERSUS

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

2:SYED MAHMADUL HASSAN
S/O SORHAB ALI
R/O VILL- BANGALIPARA PART-I
PS. BILASIPARA
DIST. DHUBRI
ASSA

Advocate for the Petitioner : MR. L R MAZUMDER
Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR

ORDER

31.07.2023

Heard Mr. L. R. Mazumdar, learned counsel for the petitioner as well as
Mr. B. Sarma, learned Additional Public Prosecutor, Assam appearing for State

respondent No.1 and Mr. T. K. Bhuyan, learned counsel appearing for respondent No.2.

By this application under Section 482 Cr.P.C., the petitioner has prayed for setting aside and quashing the impugned order dated 17.12.2012 passed by the learned Additional sessions Judge, Bilasipara in Criminal Appeal No. 05/2022.

The brief fact of the case is that complainant /respondent No.2 filed a complaint in the court of learned SDJM(M), Bilasipara, Dhubri alleging *inter alia* that the petitioner being the proprietor of Dynamic Enterprise had issued a cheque in favour of the complainant store namely, 'Hassan Enterprise' which was dishonored due to insufficient fund in the account of the accused petitioner. Thereafter, the respondent No.2 issued legal notice to the petitioner for demand of the amount but the petitioner failed to pay the same. Thereafter, the respondent No. 2 lodged complaint under Section 138 of the N.I. Act, 1881 and the learned trial court convicted the petitioner vide judgment dated 04.08.2022 and challenging the aforesaid judgment and order, the petitioner preferred a criminal appeal before the learned Additional Sessions Judge, Bilasipara, Dhubri and the appeal was admitted. The petitioner was present all along the date except on 17.12.2022 due to her illness and thereafter the Hon'ble Court dismissed the appeal for default."

The impugned order dated 17.12.2022 is extracted herein below:

"17.12.2022: Respondent Syed Mahmudul Hassain is present and by filing petition No. 2351/2022 prayed an adjournment for hearing.

Appellant is absent without any steps.

Hence, the appeal stands dismissed for default."

The plain language of Sections 385 and 386 Cr.P.C. does not

contemplate dismissal of appeal for default for non appearance simpliciter. Appellate Court must dispose of the appeal after perusal and scrutiny of the record. Similarly, if the accused or his lawyer is absent, the Appellate Court may appoint a lawyer at State expense to defend his case.

In view of the above legal position the impugned order, dated 17.12.2022, passed in Criminal Appeal No. 05/2022 by the learned Additional sessions Judge, Bilasipara is hereby set aside and quashed with direction to restore the appeal to file and proceed to dispose of the appeal on merit in accordance with law.

The relevant parties are directed to appear before the learned appellate court on 16.08.2023 to receive further instructions.

Accordingly, this criminal petition stands dispose of.

JUDGE

Comparing Assistant