

GAHC010078132023



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

Case No. : I.A.(Crl.)/299/2023

ON THE DEATH OF LATE BIKASH BHUIYA
HIS LEGAL HEIRS, NAMELY

1.1: SMTI SEFALI BHUIYA
D/O LATE BINODE BIHARI BHUIYA
R/O BHUYA ROAD
JANIGANJ
P.O. AND P.S.-SILCHAR
DIST-CACHAR (ASSAM)
PIN-788001

1.2: BIDYUT KUMAR BHUIYA
S/O LATE BINODE BIHARI BHUIYA
R/O FLAT-C 202
PRISTINE GRANDEUR
WAKED
PUNE-411057

1.3: SMTI KAJAL SAHA
D/O LATE BINODE BIHARI BHUIYA
R/O SACHIN ENCLAVE
SOLAPARA ROAD
GUWAHATI-781008

1.4: BIMAL KUMAR BHUIYA
S/O LATE BINODE BIHARI BHUIYA
R/O 18/80
DOVERLANE
GARIAHAT
KOLKATA-700029

1.5: BIDHAN CHANDRA BHUIYA
S/O LATE BINODE BIHARI BHUIYA
R/O BHUYA ROAD

JANIGANJ
P.O. AND P.S.-SILCHAR
DIST-CACHAR (ASSAM)
PIN-788001

1.6: SMTI. ANJALI SAHA
D/O LATE BINODE BIHARI BHUIYA
R/O NAIPUKUR
OPPOSITE OF SUHASINI APARTMENT
RAJARHAT
KOLKATA-70015

VERSUS

TAPADHIR KANTI DAS AND ANR.
S/O LT. SIRISH CHANDRA DAS, R/O SONAI ROAD, SILCHAR, P.O. AND P.S.-
SILCHAR, DIST-CACHAR (ASSAM), PIN-788001

2:THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR
ASSA

Advocate for the Petitioner : MR. I H LASKAR

Advocate for the Respondent : MR. M H RAJBARBHUIYAN

Linked Case : Crl.Rev.P./12/2020

TAPADHIR KANTI DAS
S/O LT. SIRISH CHANDRE DAS
R/O SONAI ROAD
SILCHAR
P.O. AND P.S.-SILCHAR
DIST-CACHAR
ASSAM
PIN-788001

VERSUS

THE STATE OF ASSAM AND ANR.
REPRESENTED BY THE PUBLIC PROSECUTOR
ASSAM

2:BIKASH BHUYA
S/O LT. BINOD BIHARI BHUYA
R/O BHUYA ROAD
JANIGANJ
P.O. AND P.S.-SILCHAR
DIST-CACHAR
ASSAM
PIN-788001

Advocate for : MR. M H RAJBARBHUIYAN
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM AND ANR.

BEFORE
THE HON'BLE MR. JUSTICE ARUN DEV CHOUDHURY
ORDER

22.08.2023

1. Heard Mr. P. K. Deka, learned counsel for the applicants/respondents.
Also heard Mr. M. H. Rajbarbhuiyan, learned counsel for the opposite party/petitioner.
2. This is an application filed under Section 302 of the Code of Criminal Procedure, 1973 for substitution of the legal heirs of the respondent No. 2 in the connected Crl.Rev.Petition No. 12/2020.
3. The background facts of filing such application are as follows:-
 - I. The respondent No. 2 in the connected Crl. Rev. Petition instituted a prosecution under Section 138 of the Negotiable Instrument Act, 1881, against the petitioner in the connected Crl. Rev. Petition.

II. The aforesaid case was registered as N.I. Case No. 78/2010.

III. The learned Chief Judicial Magistrate, Cachar, Silchar by its Judgment dated 20.11.2018, convicted the Criminal Revisional Petitioner under Section 138 of N.I. Act, and sentenced him to pay a sum of Rs. 6 Lakhs (six lakhs) to the complainant, as fine including lump sum interest amount, in default 6 months of rigorous imprisonment.

4. Being aggrieved by the aforesaid judgment of the learned Chief Judicial Magistrate, Cachar, Silchar, the Revisional Petitioner preferred an appeal being CrI. Appeal No. 40/2018, before the learned Sessions Judge, Cachar, Silchar which was also dismissed by its Judgment dated 18.11.2019.

5. Being aggrieved, again the connected CrI. Rev. Petition No. 12/2020 was preferred.

6. During the pendency of the said CrI. Rev. Petition, the complainant of the N.I. Case No. 78/2010 / respondent No. 2 in the CrI. Rev. Petition, expired. Accordingly, the present Interlocutory Application (CrI) has been filed as discussed hereinabove for substitution of the legal heirs of the deceased complainant/respondent No. 2.

7. The complainant/respondent No. 2, of the connected CrI. Rev. Petition, expired unmarried leaving behind the present applicants as his Class-2 legal heirs. The present applicants are the brothers and sisters of the deceased complainant/respondent No. 2.

8. The law is by now well settled that on the death of complainant during

proceeding of a complaint case, the right of the legal heirs of the deceased complainant to continue with the prosecution survives. Such principle was laid down by the Hon'ble Apex Court in the case of ***Chand Devi Daga and Others –Vs- Manju K. Humatani and Others*** reported in **(2018) 1 SCC 71**. A Co-ordinate Bench considering a similar situation in the case of ***Kushal Kr. Talukdar –Vs- Chandra Prasad Goenka*** reported in **2004 (3) GLT 465** dealing with a complaint case under Sections 138 and 142 of the Negotiable Instrument Act, 1881, held that on the death of the complainant, substitution of his legal heirs is permissible.

9. In view of the aforesaid proposition of law, in the considered opinion of this Court, the present applicants should be arrayed as respondent Nos. 2(a), 2(b), 2(c), 2(d), 2(e) and 2(f) as described at paragraph 6 of this interlocutory application.
10. Registry to correct the cause title of the connected Crl. Revision Petition No. 12/2020.
11. Accordingly, this Interlocutory Application (Crl.) stands disposed of.

JUDGE

Comparing Assistant