

GAHC010079642023



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

**Case No. : Crl.Rev.P./169/2023**

KARTIK CHATTERJEE  
S/O AJODHYA CHATTERJEE  
R/O DOWN TOWN MOTHURA NAGAR, H. NO. 44, FLAT NO. 2A,  
P.O. DISPUR, P.S. DISPUR,  
DIST. KAMRUP (M), ASSAM  
PIN-781006

VERSUS

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

2:SHREE DHRUBA CHETTRI  
S/OLT. DOL BAHADUR CHETRI  
R/O SOUTH BASISTHA NAGAR (PASHUPATI NAGAR  
(H. NO. 43

P.O. BASISTHA  
P.S. BASISTHA

DIST. KAMRUP (M)  
ASSAM  
PIN-78102

**Advocate for the Petitioner : MD. S ISLAM**

**Advocate for the Respondent : PP, ASSAM**

**BEFORE  
HONOURABLE MRS. JUSTICE MITALI THAKURIA**

**ORDER**

**Date : 17.07.2023**

Heard Mr. S. Islam, learned counsel for the petitioner. Also heard Mr. P. S. Lahkar, learned Additional Public Prosecutor for the State respondent.

**2.** This is an application under Section 401 *read with* Section 397 of the Code of Criminal Procedure, 1973, against the Orders dated 08.02.2023 and 18.08.2022, passed by the learned Sub Divisional Judicial Magistrate No. 1, Kamrup (M), Guwahati, in C.R. Case No. 644/2016.

**3.** It is submitted by Mr. S. Islam, learned counsel for the petitioner, that several dates, i.e. 23.07.2020, 16.10.2020, 19.01.2021, 12.03.2021, 05.05.2021, 12.08.2021, 03.11.2021, 27.12.2021, 15.03.2022 & 22.06.2022, were fixed for cross-examination of DW-1, but he did not turn up for cross-examination. However, on 18.08.2022, i.e. the only date when the petitioner remained absent and could not cross-examine the DW-1, the Court had passed the order fixing the next date for argument on 29.09.2022 without giving any chance for cross-examining the DW-1. Accordingly, on 29.09.2022, a petition was filed before the learned SDJM No. 1 praying to allow the petitioner to cross-examine the DW-1, but the same was rejected by the learned Court below vide order dated 08.02.2023 with an observation that the Court has no power to review its own order and the said petition was dismissed and the next date was again fixed for argument. Further it is submitted that the DW-1 is an important witness and if the petitioner is not allowed to cross-examine the DW-1, there

would be prejudice on the part of the petitioner. The learned Court below passed the order dated 08.02.2023 fixing the next date for argument in the absence of the petitioner and did not give any chance to cross-examine the DW-1 which is a necessary witness to be cross-examine to prove the case of the petitioner.

**4.** The learned Additional Public Prosecutor, Mr. P. S. Lahkar, did not raise any objection if the petition is allowed giving chance to the petitioner to cross-examine the DW-1.

**5.** After hearing the submissions of learned counsels of both sides, I have carefully gone through the petition and the materials available on record.

**6.** From the certified copy of the Order Sheets, it reveals that the complainant/petitioner was regularly present before the learned Court below. It also reveals that there were several adjournments sought by the other side for cross-examination of DW-1. However, it could not be denied that on the particular date, i.e. on 18.08.2022, the complainant remain absent without any information to the Court and for which, the matter was fixed for argument by closing the evidence of DW-1.

**7.** In view of above and also considering the entire circumstances of the case and further for the ends of justice, I find it prudent to allow the present petition by giving a chance to the petitioner to cross-examine the DW-1. Accordingly, both the parties are directed to appear before the learned Court below on the

next date fixed, i.e. on 20.07.2023, and on their appearance, the learned Court below shall give an opportunity to the petitioner to cross-examine the DW-1.

**8.** With the above observation, the present petition stands disposed of.

**JUDGE**

**Comparing Assistant**