

GAHC010126002023



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

Case : I.A.(Crl.)/608/2023

-in-

Crl. Petition No. 558/2023

MRS. MAHARUN NESHA
W/O LATE HABIBUR RAHMAN
R/O NEAR DON BOSCO SCHOOL
WARD NO. 2
P.O. AND P.S. MANGALDOI
DISTRICT DARRANG
ASSAM
PIN 784125.

VERSUS

NEPUT RAJIYUNG @ ACTION DIMASA @ MIPUT RAJIYUNG AND 2 ORS
S/O DEPON RAJITUNG R/O UMRANSO
UNDER UMRANGSO POLICE STATION
DIST. DIMA HASAO
ASSAM

2:THE STATE OF ASSAM
REPRESENTED BY THE PP
ASSAM

3:BIKASH THOUSEN

S/O UPENDRA JHON VILL- DONGJEN RAJI
P.S. UMANGRANSO DIST. DIMA HASAO
ASSAM
PIN 788931.

Advocate for : MR D KALITA

Advocate for : PP

ASSAM appearing for NEPUT RAJIYUNG @ ACTION DIMASA @ MIPUT
RAJIYUNG AND 2 ORS

**BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI**

ORDER

Date : 05.10. 2023

Heard Mr. D. Kalita, learned counsel for the applicant and Mr. B. Sarma, learned Addl. Public Prosecutor for the State respondent No.2, who is respondent No. 1 in the main petition. Also heard Mr. UK Nair, learned senior counsel, assisted by Mr. S. Borthakur, learned counsel for the respondent No. 3 who is respondent No. 2 in the main criminal petition.

2. The applicant, Ms. Maharun Nesha has filed an application for impeaching her as respondent No. 3 in the main Criminal Petition No. 558/2023.

3. The factual matrix of the case is that the applicant is the wife of the deceased Habibur Rahman who was a constable of Assam Police, was killed by the extremists at Diyungmukh in the district of Dima Hasao, Assam, and in this connection, the opposite party No. 2 has lodged an FIR before the Umrangso Police Station, which was registered as Umrangso P.S. Case No. 22/2007 under Sections 120B/120/121/121A/109/326/307/427/395 IPC read with Section 27 of the Arms Act and subsequently, the FIR was reregistered as Diyugmukh P.S. Case No. 7/2008 under Sections 120B/ 120/121/121A/109/326/307/427/395 IPC read with Section 27 of the Arms Act .

4. Accordingly, after completion of investigation, charge sheet has been

submitted. However, during trial of the case by the learned District & Sessions Judge, Dima Hasao, Assam in Sessions Case No. 18/2008, the applicant was allowed to participate in the proceedings.

5. Subsequently, the applicant came to know that the opposite party No. 2 as petitioner has filed a Criminal Petition No. 558/2023 before this Court challenging the order dated 04.06.2022, passed by the learned District and Sessions Judge, Dima Hasao in Sessions Case No. 18/2008 wherein the Court was pleased to allow the prayer for recalling opposite party/ respondent No. 2 for recording his evidence. Subsequently, on 13.06.2023, notice was issued to the applicant/ petitioner and further examination of PW 4 has been kept in abeyance and liberty has been given to the learned trial Court to examine the other witnesses.

6. It is submitted by the learned counsel for the applicant that though the opposite party/petitioner having knowledge about participation of the applicant as a victim family in criminal proceeding of Sessions Case No. 18/2008, has not impleaded the applicant in Criminal Petition No. 558/2023 which has infringed the participatory right of the applicant as a victim family. The applicant is a necessary party in the Criminal Petition and her presence is very much necessary for proper adjudication of the matter. As such, the applicant be impleaded as respondent No. 3 in the Criminal Petition No. 558/2023.

7. In support of his submissions, the learned counsel for the applicant has placed reliance on a case law- ***Jagjeet Singh & Ors vs. Ashish Mishra @***

Monu & Anr. reported in 2022 LiveLaw (SC) 376 wherein learned counsel has pointed out the relevant paras which are reproduced as below:-

“23. It cannot be gainsaid that the right of a victim under the amended Cr.P.C. are substantive, enforceable, and are another facet of human rights. The victim’s right, therefore, cannot be termed or construed restrictively like a *brutum fulmen*. We reiterate that these rights are totally independent, incomparable, and are not accessory or auxiliary to those of the State under the Cr.P.C. The presence of ‘State’ in the proceedings, therefore, does not tantamount to according a hearing to a ‘victim’ of the crime.

24. A ‘victim’ within the meaning of Cr.P.C. cannot be asked to await the commencement of trial for asserting his/ her right to participate in the proceedings. He/ She has a legally vested right to be heard at every step post the occurrence of an offence. Such a ‘victim’ has unbridled participatory rights from the stage of investigation till the culmination of the proceedings in an appeal or revision. We may hasten to clarify that ‘victim’ and ‘complainant/ informant’ are to distinct connotations in criminal jurisprudence. It is not always necessary that the complainant/ informant is also a ‘victim’, for even a stranger to the act of crime can be an ‘informant’, and similarly, a ‘victim’ need not be the complainant or informant of a felony.”

8. The learned counsel for the informant/opposite party No. 2 has made no objection on the prayer of the applicant. However, learned counsel for the opposite party No. 1 has made objection to implead the applicant as respondent

No. 3 in the Criminal Petition No. 558/2023. But considering the aforesaid proposition of law, this Court is of the view that the applicant is a necessary party in the criminal proceeding. Accordingly, the applicant Maharun Nesha be impleaded as respondent No. 3 in the criminal petition being No. 558/2023.

9. The Registry is directed to do the needful by inserting the name of the applicant, Maharun Nesha as respondent No. 3 in the CrI. Pettion No 558/2023 .

10. The I.A. stands disposed of.

JUDGE

Comparing Assistant