

GAHC010165172023



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

Case No. : Crl.Rev.P./293/2023

MD. FAKAR UDDIN
S/OLATE HUSSAIN ALI
VILL- FURHANI ATI
P.S. JURIA
DIST. NAGAON, ASSAM

VERSUS

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

2:MD. ABDUL HALIM
S/O LATE JABED ALI
R/O VILL- HATIMURIAGAON
P.S. MOIRABARI
DIST. MORIGAON
ASSAM
PIN-78212

Advocate for the Petitioner : MR. A R SIKDAR

Advocate for the Respondent : PP, ASSAM

BEFORE
THE HON'BLE MR JUSTICE ARUN DEV CHOUDHURY
O R D E R

03.08.2023

1. Heard Mr. AR Sikdar, learned counsel for the petitioner. Also heard Mr. P Borthakur, learned Additional Public Prosecutor, Assam.
2. By this application under Section 482 of Code of Criminal Procedure, 1973, the order dated 10.06.2023 passed by the learned court of Sessions Judge, Nagaon, Assam is assailed.
3. The petitioner is an accused in Sessions (T-1) Case No. 98 (N)/2013. The learned Sessions court below by an order dated 17.02.2023 altered the charge by adding Section 34 IPC alongwith the already framed charges under Section 304 (B) IPC and 302 IPC.
4. In the aforesaid background, the present petitioner filed an application under Section 217 Cr.P.C. with a prayer to allow him to cross-examine PW 1 and PW12, who were already examined and cross-examined. Such application was rejected by the learned Sessions Judge under its order dated 10.06.2023.
5. Perusal of the said order, clearly shows that the learned trial court treated the application filed by the petitioner under Section 217 Cr.P.C. as an application under Section 311 Cr.P.C. and proceeded to deal with the matter applying the principle of law applicable in case of an application filed under Section 311 Cr.P.C. and dismissed the said petition.
5. The parameter and consideration laid down under Section 311 Cr.P.C. and 211 Cr.P.C. are all together different. Therefore, the consideration for determining an application under Section 217 Cr.P.C. shall also be different. Section 217 Cr.P.C. clearly mandates that wherever a charge is

altered and added to by a court after the commencement of the trial, the prosecutor and accused shall be allowed to recall or re-summon or examine with reference to such alteration or addition of any witness who may have been examined. Thus language of the Section 217 Cr.P.C. clearly creates a right upon an accused and the prosecutor to recall or re-summon or re-examine the witnesses already examined with reference to such alteration or addition, whereas under Section 311 Cr.P.C., a court is empowered to summon material witness or examine person at any stage of enquiry or trial or other proceeding a witness or examine such person though not summoned or recall or re-examined a person already examined, if it appears to the court that his evidence is essential for just decision of the case. Thus it is a discretion of the court subject to the satisfaction as provided under Section 311

6. Therefore, in the aforesaid background, this court is of the considered opinion that the learned Sessions Judge below proceeded in a wrong presumption by dealing application under Section 217 Cr.P.C. as an application under Section 311 Cr.P.C. whereas a specific application under Section 217 Cr.P.C. was made by the accused.

7. In that view of the matter, the order dated 10.06.2023 is set aside and quashed and it is directed that the learned trial court shall deal with the petition filed by the petitioner being petition No. 589/2023 dated 09.03.2023 as a petition under Section 217 Cr.P.C. and pass a fresh order in accordance with law.

8. With the aforesaid direction, the present criminal revision petition stands allowed.

9. Petitioner shall appear before the learned Sessions court below on

23.08.2023.

JUDGE

Comparing Assistant