

GAHC010175162023



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

Case No. : Crl.Rev.P./309/2023

ANUP KUMAR DEY @ BABUL DEY
S/O LATE ASISH DEY
R/O VILL- NEW MISSAMARI RAILWAY STATION, P.S. MISSAMARI
DIST. SONITPUR, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. S BISWAS

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR

ORDER

10.08.2023

Heard Mr. S. Biswas, learned counsel appearing for the petitioner. Also heard Mr. D.P. Goswami, learned Addl. Public Prosecutor, Assam appearing for the State respondent.

2. By this petition under Section 397 read with Section 401 Cr.P.C., the

petitioner has prayed for setting aside and quashing the impugned order, dated 17.07.2023 passed by the learned Assistant Sessions Judge, Sonitpur at Tezpur in connection with Sessions Case No.85/2021.

3. The case of the petitioner, in a nutshell, is that on 17.02.2020, the informant lodged an FIR before the Missamari P.S., Sonitpur, alleging that on 13.02.2020, when he was not at his home, his wife went to her paternal home and when she didn't contact him, he enquired about her and came to know that his wife had eloped with the petitioner and she was kept in an unknown place. On the basis of the aforesaid FIR, a case was registered as Missamari P.S. Case No.30/2020 u/s 366 of IPC corresponding to G.R. Case No.534/2020. After filing of charge-sheet in the case, trial commenced before the court of learned Assistant Session Judge, Sonitpur at Tezpur.

4. Mr. S. Biswas, learned counsel appearing for the petitioner, submits that during the cross-examination of PW-2, namely, Moina Das some suggestions were put to her that "she on 28.02.2020 has filed divorce suit against her husband in the court of District-Udalguri vide T.S. (M) No.10/2020 and in the said case she complained against her husband that he tortured her physically and mentally by taking alcohol and that said case is still pending there". But, Mr. Biswas submits, while the said suggestion was recorded, due to some inadvertent error it was recorded as "it is not a fact that on 28.02.2020 my husband lodged a divorce case against me at District Court at Udalguri vide T.S. (M) No. 10/2020 and till today the case is pending there". Further, Mr. Biswas submits that to another question though she deposed that "the accused person was doing job at Mazbat Railway Station", while recording the deposition, it was inadvertently recoded as "the accused was doing job at Missamari Railway Station". In order to clarify such inadvertencies, the petitioner filed a petition

before the learned Court below which was registered as Petition No. 236/2023, dated 04.07.2023 under section 311 of the Cr.P.C. for re-calling the PW-2 for clarification of the answers which were recorded wrongly though the witness deposed correctly. However, on 17.07.2023, the court of learned Assistant Session Judge, Sonitpur, rejected the aforesaid petition holding that the anomalies which occurred during the cross-examination of PW-2 neither would cause any prejudice to the present petitioner nor deflects the case to a new direction. Further, the learned court below held that re-calling of PW-2 for the clarification of the so-called anomalies isn't essential for just decision of the case.

5. Being aggrieved with the order, dated 17.07.2023 passed in petition No. 236/2023 in Session Case No. 85/2021 arising out of Missamari P.S. Case No.30/2020 corresponding to GR No. 534/2020, the petitioner has preferred this instant revision petition.

6. Section 311 Cr.P.C. provides, *inter alia*, to recall and re-examine any person whose evidence has already been recorded in order to prevent failure of justice on account of leaving some ambiguity in the statement of such witness examined by either side. The determinative factor is whether it is essential to the just decision of the case. In the instant case, the respondent sought to recall the PW- 2 to get clarification on the above two suggestions put by him as he felt the same were inadvertently recorded by the learned trial Court, which might occasion a failure of justice to his case. Upon consideration of the averments made in the petition and hearing the learned counsel of both sides as well as the impugned order, this Court finds that the petitioner having sought to seek clarification only on the aforesaid specific suggestions put to PW-2, it is in the interest of justice, the learned trial Court ought to have allowed it.

7. Therefore, the petition stands allowed with direction to the learned trial Court to recall PW-2 strictly to get clarification on the recorded replies to the suggestions put by the accused to the PW-2/complainant and no further.

8. The petitioner is directed to appear before the learned trial Court on or before **25.08.2023**.

The petition stands disposed of.

JUDGE

Comparing Assistant