

GAHC010176312023



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

Case No. : Crl.Rev.P./315/2023

ABDUL MANNAN SK AND 4 ORS
S/O AMJAD HUSSAIN
VILL- GUTIPARA, PART-III
P.S. BILASIPARA
DIST. DHUBRI, ASSAM

2: SURAT JAMAL
S/O JAFAR ALI
VILL- GUTIPARA
PART-III
P.S. BILASIPARA
DIST. DHUBRI
ASSAM

3: ANOWAR HUSSAIN
S/O JAFAR ALI
VILL- GUTIPARA
PART-III
P.S. BILASIPARA
DIST. DHUBRI
ASSAM

4: ABDUL KARIM
S/O SAHAD ALI
VILL- GUTIPARA
PART-III
P.S. BILASIPARA
DIST. DHUBRI
ASSAM

5: SHAJAHAN ALI SK.
S/O PASAN ALI SK.
VILL- GUTIPARA
PART-III

P.S. BILASIPARA
DIST. DHUBRI
ASSA

VERSUS

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

2:TARA BHANU BEOWA
W/O LATE AKTAR HUSSAIN
VILL- GUTIPARA
PART-I
P.S. BILASIPARA

DIST. DHUBRI
ASSA

Advocate for the Petitioner : MR. A B SIDDIQUE

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

Date : 16-08-2023

1. Heard Mr. A.B. Siddique, learned counsel for the petitioner and also heard Mr. P Borthakur, learned Addl. PP, Assam.
2. The present criminal revision petition has been filed under section 397/401 Cr.P.C., assailing an order dated 10.12.2018 and 28.07.2023 passed by the court of Sessions, Bilasipara in Sessions Case No.22/2018.
3. By the aforesaid order(s) the learned Sessions Judge, Bilasipara has rejected the application filed by the present petitioner under section 311 Cr.P.C., for recalling the PW-1 and PW-2 for cross-

examination.

4. The ground for filing such application under section 311 Cr.P.C calling the witnesses is that the two counsels engaged earlier have failed to cross-examine the PW-1 and PW-2 properly and had failed to put certain questions which are very necessary and vital for the determination of the cases.

5. The learned trial court while dealing with the principle of section 311 Cr.P.C., as well as the facts of the case, rejected such application. The rejection of such application can be summarized as follows:

I. The evidence of PW-1, PW-2, PW-3 and PW-4 were taken on 17.09.2018 and in the meantime all witnesses were cross-examined by the two counsels on 17.09.2018 and 18.04.2018.

II. The PW-1 is not the informant of the case and PW-2 being the informant of the case has already been cross-examined in details on the point of FIR.

III. The court after scrutiny of the testimony of PW-1, PW-2, PW-3 and PW-4 and after perusal of the FIR did not find any just ground to recall PW-1 and PW-2 for cross-examination.

6. It was an opinion of the learned court below that the evidence of PW-1, PW-2, PW-3 and PW-4 are sufficient to arrive at a just decision in the case along with the testimony of the other witness including the I/O of the case and there is no necessity to call the PW-1 and PW-2 for re-cross-examination.

7. The Hon'ble Apex Court in the case of **Natasha Singh Vs.**

CBI (State) reported in **(2013) 5 SCC 741** held that the basic purpose of exercise of power under Section 311 Cr.P.C is whether calling of witness was necessary for a just decision of the case.

8. This court has also perused the order. Considering that already all witnesses were examined, the learned Sessions Judge has come to a conclusion after examination of the aforesaid witnesses as well as the evidence of the I/O, that there is no necessity to re-cross-examine the PW-1 and PW-2 to arrive at a just decision. This Court finds no illegality in the aforesaid order to interfere with the same in exercise of its power under section 482 Cr.P.C inasmuch as a plain reading of the application filed by the petitioner under section 311 Cr.P.C, it is clear that the same has been filed to fill up certain lacunae left during the cross examination on the earlier date.

9. Accordingly, the present petition stands dismissed being devoid of any merit.

JUDGE

Comparing Assistant