

GAHC010202082023



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

**Case No. : Crl.Pet./962/2023**

DHIREN DEKA  
S/O LATE BHABEN DEKA  
R/O HOUSE NO. 2, OPPOSITE CITU OFFICE, NAMONI NIZARAPAR  
CHANDMARI, COLONY,  
P.O. SILPUKHURI, P.S. CHANDMARI, DIST. KAMRUP (M), ASSAM, PIN-  
781003, ASSAM

VERSUS

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

2:MD. MONU BABU ALI  
S/OMD. KASHIM ALI  
SEASON PLUS  
PRIYAMBADA COMPLEX GANESHGURI  
DISPUR  
GUWAHATI-781006  
ASSA

**Advocate for the Petitioner : MR. A CHAMUAH**

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

**BEFORE  
HONOURABLE MRS. JUSTICE MITALI THAKURIA**

**ORDER**

**13.09.2023**

Heard Mr. A. Chamuah, learned counsel for the petitioner. Also heard Ms. S. H. Bora, learned Additional Public Prosecutor for the State respondent.

This is an application filed under Section 482 *read with* Section 401 of the Code of Criminal Procedure, 1973, challenging the impugned order dated 15.07.2023, passed by the learned SDJM No-2, Kamrup(M), Guwahati in CR.Case No.145<sup>c</sup>/2015.

It is submitted by the learned counsel for the petitioner that the petitioner as a complainant filed a complaint case under Section 138 of N.I. Act against the present respondent No.2 in the year 2015. The learned Trial Court after taking cognizance, issued summons to the accused persons which was duly served upon him by the Dispur P.S. However, the respondent No.2 despite of the service of summons issued by the Court, remained absent on the date of appearance. Thereafter, NBWA and P & A were issued for several times but yielding nothing. In the meantime, the accused person appeared and was enlarged on bail. But, after two/three dates he defaulted and refused to appear before the same. Again NBWA against the accused person and bailor remained un-executed for years together by the Dispur P.S. and Fatashil Ambari P.S. Thus, the learned Trial Court was forced to issue BWA and later on NBWA against the OCs of both the PS yet no result could be abstracted.

The learned counsel for the petitioner also submitted that during the Covid-19 period, the case was adjourned by the Court and after that he regularly appeared before the Court. However, the learned Trial Court had dismissed the complaint filed by the present petitioner on the ground of not taking steps on 5 consecutive dates. But, out of these 5 dates, the learned Magistrate was on leave for 3 dates.

Being highly aggrieved, the petitioner preferred this criminal petition for restoration of the CR Case No.145<sup>C</sup>/2015, which was pending before the Court of learned SDJM, Kamrup(M), Guwahati.

In this Context, the learned Additional Public prosecutor has submitted that the order-sheet itself reveals that the petitioner not only remained absent for 2 or 3 occasions, but, he remained absent on numbers of occasion.

After hearing the submissions made by the learned Advocates of both sides, I have perused the record specially the order-sheet which has been annexed along with the petition. It is a fact that the petitioner remained absent on numbers of occasion, but, also it cannot be denied that the petitioner remained present in the earlier occasion prior to Covid-19 pandemic. From the order sheet it also revealed that the case had to be adjourned on 5 consecutive dates because of the absence of the petitioner and leave of the learned Magistrate as well.

Further considering the submissions made by the petitioner as well as on interest of justice, I find that one more chance may be given to the present petitioner/complainant to continue the proceeding which has been filed by him under Section 138 of N.I. Act. Accordingly, the order dated 15.07.2023, passed

by the learned SDJM No-2 Kamrup(M) is hereby set aside and the CR Case No.145<sup>c</sup>/2015 is hereby restored to file with a direction to the petitioner to appear before the learned Trial Court on or before **30.09.2023** and also remain present in the proceeding.

Let a copy of this Order be served to the learned Court of SDJM No.2, Kamrup(M).

In terms of above, this Criminal petition stands disposed of.

**JUDGE**

**Comparing Assistant**