

GAHC010212442023



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

Case No. : Crl.Rev.P./410/2023

SUMAN KUMAR ROY
S/O LATE SUNIT KR. ROY
R/O ALI SINGA BHOTPARA
P.O. ALISINGA, PIN-784112
P.S. DHEKIAJULI
DIST. SONITPUR, ASSAM

VERSUS

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

2:JHUMA CHAKRABARTTY ROY
W/O SUMAN KR. ROY
R/O DABAKA TOWN

WARD NO. 6

P.O. AND P.S. DBAKA
DIST. HOJAI
ASSAM
PIN-78244

Advocate for the Petitioner : MR. ABU JAHID

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA**

ORDER

Date : 20.09.2023

Heard Mr. A. Jahid, learned counsel for the petitioner. Also heard Ms. A. Begum, learned Additional Public Prosecutor for the State respondent.

This is an application under Section 397 *read with* Section 401 of the Code of Criminal Procedure, 1973, against the order dated 05.09.2023, passed by the learned Judicial Magistrate First Class, Hojai, in M.R. Case No. 198/2018, whereby, the evidence of D.W. was closed and the matter was fixed for hearing/argument on 20.09.2023.

It is submitted by the learned counsel for the petitioner, Mr. Jahid, that on the date fixed, i.e. on 05.09.2023, a petition was filed by the petitioner stating that the petitioner/second party was not in a position to attend the Court due to some medical ground and accordingly they also could not file the evidence on affidavit of D.W. The prayer of the petitioner was considered and the petition was accordingly allowed, but the evidence of D.W. was closed and the case was fixed for hearing/argument. Thus, it is submitted that the petitioner was not

given a chance to adduce the evidence of D.W. as the same was closed in his absence, though his absence was considered by the learned Court below. Further it is submitted that if the petitioner is not allowed to adduce the evidence, prejudice will be caused to him as he wants to adduce his defence witnesses in support of his plea.

In this context, the learned Additional Public Prosecutor, Ms. Begum, has submitted that the notice may be issued on respondent No. 2 as the same is a necessary party in this case.

After considering the submissions made by the learned counsels for both sides, I have perused the case record and the order sheets annexed along with the petition. It reveals from the orders that on 08.08.2023, the case was fixed for Cross of P.Ws. and accordingly the P.Ws. were Crossed and the respondent/present petitioner was directed to submit all D.W. evidence on affidavit on the next date fixed without fail. However, it is seen that on 05.09.2023, i.e. the date fixed for evidence of D.Ws., the petitioner did not appear before the Court on medical ground and accordingly the evidence of D.W. was closed and the case was fixed for hearing/argument

However, considering the submissions made by the learned counsel for the petitioner and also for the ends of justice, I am of the view one chance can be given to the petitioner to adduce the evidence of D.Ws. before the learned Court below. Accordingly, the order of closure of evidence of D.Ws., dated 05.09.2023, passed by the learned Judicial Magistrate First Class, Hojai, in M.R. Case No. 198/2018, is hereby set aside and the petitioner is accordingly allowed to adduce the evidence of all the D.Ws. on the next date to be fixed by the

learned Court below without fail so that there cannot be more delay in disposal of the case.

With the above observation, this criminal petition stands disposed of.

JUDGE

Comparing Assistant