

GAHC010227782023



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

Case No. : Crl.Rev.P./444/2023

ASHIQUR RAHMAN AND ANR
S/O SIRAJUL ISLAM
R/O VILL- HATIPUKHURI P.S. RUPAHIHAT
DIST. NAGAON, ASSAM

2: MAHMADUL HOQUE @ RAHMAN
S/O AMRAN HUSSAIN
R/O VILL- HATIPUKHURI
P.S. RUPAHIHAT
DIST. NAGAON
ASSA

VERSUS

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

2:SAIJUL ISLAM
S/O ABDUL MAZIT
R/O VILL- GEHUA CHALCHALI
P.S. RUPAHIHAT
DIST. NAGAON
ASSA

Advocate for the Petitioner : MR SARFRAZ NAWAZ

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER**

10.10.2023

Heard Mr. S. Nawaz, learned counsel for the petitioners and Mr. P. Borthakur, learned Additional Public Prosecutor for the State respondent.

2. In this revision petition, under Sections 397 and 401 of the Cr.P.C. read with Section 482 of the Cr.P.C., the petitioners namely, Ashiqur Rahman and Mahmadul Hoque @ Rahman have put to challenge the correctness or otherwise of the order dated 30.08.2023, passed by the learned Assistant Sessions Judge, Nagaon in Sessions [T2] Case No. 101[N]/2023, under Sections 366[A]/34 of the IPC.

3. It is to be noted here that vide impugned order dated 30.08.2023, the learned court below had dispensed with the cross-examination of PW2, as per provision of Section 309[2][c] of the Cr.P.C.

4. Mr. Nawaz, learned counsel for the petitioners submits that the above noted case was fixed on 30.08.2023, and on that day, the learned counsel for the petitioner could not appear before the learned court below, on account of his ill health and his junior counsel had filed one petition, being petition No. 481/2023, and an adjournment was sought for, but, the learned court below has dismissed the said petition and examined the witness and thereafter, dispensed with the cross-examination by invoking the provision of Section 309[2][c] of the Cr.P.C. Mr. Nawaz further submits that the PW2, whose cross-examination is dispensed with by the learned court below, is the principal witness and her cross-examination is very much necessary, in order to establish the stand of the petitioner, otherwise it will cause prejudice to the petitioner and

therefore, it is contended to allow the petition.

5. On the other hand, Mr. Borthakur, learned Addl. P.P. submits that otherwise the impugned order so passed by the learned court below suffers from no infirmity or illegality. However, Mr. Borthakur submits that the cross-examination is a valuable right of the accused and as such, the petitioner has right to cross-examine the PW2, who was statedly the principal witness of this case and therefore, the petitioner may be given a chance to cross-examine the PW2.

6. Having heard the submissions of learned counsel for both the parties, I have carefully gone through the petition as well the documents placed on record and also perused the relevant provision i.e. Section 309[2][c] of the Cr.P.C.

7. It is to be noted here that right to cross-examination is a valuable right of the accused and denial of such right would likely and indeed bound to prejudice the accused in his defence and it will have serious consequence upon the right to fair trial of the accused, which entails the interest of the accused, the victim and the society. It is also to be noted here that right to fair trial is a constitutional and well as human right.

8. Now, advertent to the case in hand, I find that on 30.08.2023, the case was fixed for evidence and on that day one witness has turned up and the engaged counsel for the petitioner could not appear before the learned court below, on account of his ill health and therefore, as per his instruction, his junior has filed one petition, being petition No. 481/2023, but the learned court below has dismissed the same.

9. It is not in dispute that the PW2 is the principal witness of this case and denial of right to cross-examine the PW2 cause serious prejudice to the

accused. His right to fair trial stands violated here in this case. And in that view of the matter, the impugned order dated 30.08.2023, cannot be said to have withstand the test of legality, propriety and correctness and accordingly, this Court is inclined to interfere with the impugned order dated 30.08.2023.

10. Accordingly, the impugned order dated 30.08.2023, stands set aside and the learned court below is directed to afford an opportunity to the petitioners to cross-examine the PW2, by recalling the said witness. However, it is provided that no further adjournment shall be granted to the petitioners.

11. In terms of above, this Criminal Revision Petition stands disposed of.

Comparing Assistant

JUDGE