

GAHC010229082023



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

Case No. : Crl.Rev.P./450/2023

UPEN PHULKONWAR
S/O LATE PHULESWAR KONWAR
R/O NITAI NA-GAON, P.S. DEMOW
DIST. SIVASAGAR, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR I HASSAN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

Date : 12-10-2023

Heard Mr. I. Hasan, learned counsel for the petitioner and also heard Mr. P. Borthakur, learned Addl. P.P. for the respondent State.

In this petition, u/s 397 read with Section 401 Cr. P. C., the petitioner, Sri Upen Phulkonwar has challenged the correctness or otherwise of the order dated 19.9.2023, passed by the learned Additional Sessions Judge, Sivasagar in Sessions Case No. 101(S-S) of 2017.

It is to be noted here that vide impugned order dated 19.9.2023, learned Court below has closed the process of the test of DNA of the petitioner and the baby of the prosecutrix and proceeded to the next stage of the trial.

The learned counsel for the petitioner submits that the learned Court below has passed the impugned order, on the basis of a false report submitted by the I.C. of Nitaipukhuri Out Post, namely, Sri Anupam Chetia. Mr. Hasan further submits that on the prayer being made by the petitioner, the learned Court below has passed an order on 19.8.2023, directing to conduct DNA test of the petitioner and the baby of the prosecutrix and as such, there is no question of non-cooperation with the I.C of the Nitaipukhuri Out Post, and therefore, learned counsel for the petitioner has contended to set aside the order dated 19.9.2023, which was passed without hearing the petitioner, as he was absent on 19.09.2023, in the Court and to allow the petitioner to undergo the DNA test .

On the other hand, Mr. Borthakur, learned Addl. P.P. has opposed the petition on the ground that if the I.C., Nitaipukhuri Out Post had filed a false report, then the petitioner ought to have approach the learned trial Court and instead of doing the same, he approached this Court by filing the present petition and therefore, Mr. Borthakur submits that the matter may be remanded to the learned Court below to consider the same afresh.

Having heard the submission of learned Advocates of both sides and I have gone through the petition and the documents placed on record and also perused the impugned order dated 19.9.2023, and also the order dated 19.8.2023. It is to be noted here that vide order dated 19.8.2023, the learned Court below has directed the petitioner to undergo DNA test and the baby of the prosecutrix, but on 19.9.2023, the I.C of the Nitaipukhuri Out Post appeared before the Court with a report that the petitioner inspite of several request, is not cooperating with the process of conducting the test of DNA and he has never extended cooperation, which otherwise, going to show that he is not interested in the process of test of DNA himself and his baby and therefore, the learned court below has closed the process of conducting DNA test and proceeded to the next stage of the trial.

Apparently, the impugned order dated 19.9.2023 suffers from no illegality or infirmity requiring any interference of this Court except however, that it was passed without hearing the petitioner. However, in the interest of justice, it is provided that the petitioner shall approach the learned Court below for affording him an opportunity to undergo the test of DNA and in the event of filing such an application, the learned Court below shall consider the same, in accordance with law.

In terms of above, this Criminal revision petition stands disposed of at the motion stage.

JUDGE

Comparing Assistant