

GAHC010277852023



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

Case No. : Crl.Rev.P./534/2023

MOHIDUR ISLAM CHOUDHURY @ MOHIDUL ISLAM CHOUDHURY
S/O LT. ABU BAKKAR SIDDIQUE,
VILL.- SURJAKHATA, BILASIPARA, WARD NO. 4, P.O. AND P.S.-
BILASIPARA, DIST.- DHUBRI, ASSAM PIN- 783348.

VERSUS

MUSLIMA BEGUM AND ANR.
D/O LT. MOINUL HUSSAIN,
VILL.- JHAGRARAPAR PT. I,
P.O.- JHAGRARAPAR, P.S. DIST.- DHUBRI, ASSAM, PIN- 783330.

2:THE STATE OF ASSAM
REP. BY THE P.P.
ASSAM

Advocate for the Petitioner : MD A HUSSAIN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 13.12.2023

Heard Md. A. Hussain, learned counsel for the petitioner. Also heard Mr. P. Borthakur, learned Additional Public Prosecutor for the State.

This application under Section 397/401 read with section 482 of the Code of Criminal Procedure, 1973 has been filed by the petitioner, namely, Mohidur Islam Choudhury @ Mohidul Islam Choudhury, impugning the order dated 10.11.2023 passed by learned Principal Judge, Family Court in FC (CrI) No.43/2022, whereby the prayer for petitioner to cross examine the PW i.e., respondent no. 1, was rejected by the learned Trial Court.

Learned counsel for the petitioner has submitted that the respondent no.1 has filed an application under section 125 of the Code of Criminal Procedure, 1973 against the present petitioner seeking maintenance from her and the same has been registered as FC (CrI) No.43/2022.

Learned counsel for the petitioner has submitted that the respondent no.1 is the wife of the present petitioner and she has left the company of the present petitioner without any justifiable reasons. However, the present petitioner has appeared before the learned Principal Judge, Family Court and was contesting the case instituted by the respondent no.1.

On 04.10.2023, the said case before the learned Trial Court was fixed for cross examination of PW-1, however, it is submitted by learned counsel for the petitioner that on that day the present petitioner could not appear before the learned Trial Court as he could not get leave from his office on that day.

It is submitted by learned counsel for the petitioner that the petitioner is an employee of Circle Office, South Salmara, wherein he works as LDA.

It is further submitted by learned counsel for the petitioner that thereafter, on the next date fixed, i.e., on 10.11.2023, the petitioner filed an application for setting aside the order dated 04.10.2023 and prayed for allowing the petitioner to cross examine the PW-1 i.e., the respondent no. 1.

It is also submitted by learned counsel for the petitioner that though the

petitioner had mentioned in his petition that he could not obtain leave on 4.10.2023, and therefore, he was unable to attend the Court, however, learned Trial Court rejected his prayer on the ground that the present petitioner failed to give any supporting material to justify his absence on 4.10.2023, and the prayer for cross examination of the petitioner's witness was rejected and the next date was fixed for argument.

Learned counsel for the petitioner submits that if the petitioner was not allowed to cross examine the witnesses adduced by the respondent no. 1 of the present case in the case FC (CrI) No.43/2022, he would be prejudiced and would not be able to present his case properly before the learned Principal Judge, Family Court.

Learned counsel for the petitioner has also submitted that the petitioner is ready to compensate the loss suffered by the respondent no. 1 due to his absence on 4.10.2023.

Considering the submissions made by learned counsel for the petitioner, this Court is of the considered opinion that in order to arrive at a just decision by the family court and the case pending before it in connection with the petition filed by respondent no.2 under section 125 of the Code of Criminal Procedure, 1973, the petitioner is ought to have been given appropriate opportunity to cross examine the witnesses adduced by the respondent no.1, even if required by imposing cost.

This Court is of the considered opinion that if the petitioner is allowed to cross examine the witnesses adduced by the present respondent in FC (CrI) No.43/2022, by imposing cost on him, it would serve the end of justice.

Hence, the impugned order dated 10.11.2023 is hereby set aside and it is directed that the learned Principal Judge, Family Court, Dhubri shall allow the

present petitioner to cross examine the witnesses adduced by petitioner of FC (Crl) No.43/2022 subject to the condition that the present petitioner shall pay a cost of Rs. 5,000/- on the next date fixed to the respondent no.2. Thereafter, the petitioner shall also be allowed to adduce evidence in his defence.

However, payment of cost as directed hereinabove shall be a condition precedent for cross examination and adducing evidence by the present petitioner in the FC (Crl) No.43/2022 pending before the court of learned Principal Judge, Family Court, Dhubri.

With this observation, this criminal revision petition is hereby disposed of.

JUDGE

Comparing Assistant