

GAHC010284292023



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

Case No. : Crl.Pet./1353/2023

KHANDAKAR SAMSUL ARFIN
S/O LATE KHANDAKAR ABDUL GANI
R/O VILL- DANGARKUCHI
P.O. SONKUCHI,
P.S. BARPETA
DIST. BARPETA, ASSAM

VERSUS

AZIMUDDIN AHMED
S/O HASEN ALI
R/O VILL- CHAKIRVITHA
P.O. KHABLARVITHA,
P.S. BARPETA,
DIST. BARPETA, ASSAM

Advocate for the Petitioner : MR. R ALI

Advocate for the Respondent :

**BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA**

ORDER

Date : 18.12.2023

Heard Mr. R. Ali, learned counsel for the petitioners. Also heard Mr. D. Das, learned Additional Public Prosecutor for the State.

This application under section 482 of the Code of Criminal Procedure, 1973 has been filed by the petitioner, namely Khandakar Samsul Arfin, impugning the order dated 16.08.2023 passed by learned Additional Sessions Judge (FTC), Barpeta in Criminal Revision No. 10/2023 whereby the learned Additional Sessions Judge (FTC), Barpeta had upheld the order dated 03.04.2023 passed by the learned Judicial Magistrate First Class, Barpeta in NI Case No. 110/2017, whereby the prayer of the present petitioner for allowing the present petitioner to adduce the defence evidence was rejected.

Learned counsel for the petitioner has submitted that the respondent, namely, Azimuddin Ahmed had lodged a complaint case under Section 138 of the NI Act, which has been registered as NI Case No. 110/2017 and is pending before the learned Judicial Magistrate First Class, Barpeta.

Learned counsel for the petitioner has submitted that though the respondent as complained took almost four years to complete the stage of evidence of complainant side by order dated 11.05.2022, the case was fixed for defence evidence after examination of the present petitioner under Section 313 of the Code of Criminal Procedure, 1973. The next date of the said case was fixed on 22.07.2022 and as on 22.07.2022 the Presiding Officer of the Court was on leave, the next date was fixed on 13.09.2022. On the next date also the

petitioner failed to adduce the defence evidence and again the date was fixed on 14.11.2022 for defence evidence with payment of Rs. 3,000/- as cost.

Thereafter, the case was transferred to the Court of learned Judicial Magistrate First Class, Barpeta and the next date was fixed again on 27.02.2023 for defence evidence. However, on that day also, the petitioner failed to adduce the evidence in defence and ultimately on 03.04.2023, the learned Trial Court on failure of the present petitioner to adduce defence evidence, closed the evidence and fixed the case for argument.

The present petitioner preferred a revision against the order dated 03.04.2023 before the Court of learned Additional Sessions Judge (FTC), Barpeta and the said revision was disposed of by order dated 16.08.2023 which has been impugned in this case, whereby an order of learned Chief Judicial Magistrate, Barpeta passed on 03.04.2023 was upheld.

On perusal of the impugned order, I find that the impugned order is well reasoned giving proper justification for upholding the order of learned Chief Judicial Magistrate, Barpeta which was passed on 03.04.2023.

It is submitted at the bar that the next date of this case is fixed on 28.12.2023 for argument. Though it appears that the petitioner's conduct does not justify any interference with the impugned order by this Court, however, for the ends of justice one more chance is given to the petitioner, so that he may be able to present his case before the learned Trial Court.

Hence, it is directed that the petitioner, on payment of cost of Rs. 10,000/- to the respondent on the next date fixed i.e. on 28.12.2023, shall be allowed to adduce his defence evidence on a date to be fixed by the learned Trial Court. It is hereby made clear that if the petitioner fails to pay the cost on the next date fixed, i.e. 28.12.2023, no further indulgence shall be granted to the

present petitioner and the Trial Court shall proceed with the hearing of the argument in the said case and if he pays the cost of Rs. 10,000/- on 28.12.2023, the Trial Court shall fix a date on which the petitioner shall adduce the evidence in defence.

It shall be made clear that no further date beyond the date to be fixed by learned Trial Court, would be given to the petitioner for adducing his evidence in the NI Case No.110/2017.

With the above observations, this instant Criminal Petition is disposed of.

JUDGE

Comparing Assistant