

GAHC010009122013



2024:GAU-AS:12871

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

Case No. : Crl.Pet./555/2013

AMOD KR. SINGH
S/O SRI GANGA PRASAD SINGH R/O NAKHOLA, JAGIORAOD, MAUZA
GOVA, P.S. JAGIROAD, IN THE DIST. OF MORIGAON, ASSAM.

VERSUS

THE STATE OF ASSAM and ANR

2:RAJIB KISHORE SINGH
S/O JALDHAR SINGH

3:SHASHI SEKHAR SINGH @ TINU
S/O SRI RAJIB KISHORE SINGH
BOTH RESIDENTS OF AHYAPUR
P.S. AHYAPUR
DIST. MUZAFFARPUR
BIHAR

Advocate for the Petitioner : MR.D HAZARIKA, MR.L P SHARMA,MR.S CHAKRABORTY

Advocate for the Respondent : , ,PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

Date : 18-12-2024

1. Heard Mr. S. Chakraborty, learned counsel for the petitioner and Mr. P.

Borthakur, learned Additional Public Prosecutor, Assam for the respondent No.1. None appears for the respondent Nos. 2 & 3 though office note dated 27.10.2017 reflects that the notices had duly been served upon them.

2. The present petition is filed under Section 482 of the Code of Criminal Procedure, 1973 for quashing the common judgment and order dated 17.06.2013 passed by the learned Sessions Judge, Morigaon in Crl. Revision No. 55/2012 (preferred by the petitioner herein) & Crl. Revision No. 62/2012 (preferred by the respondent No.2 herein) whereby after setting aside the impugned order dated 19.10.2012 passed by the learned Sub-Divisional Judicial Magistrate, Morigaon in CR Case No. 844/2007, the prayer for re-cross-examination of the prosecution witnesses was allowed by the learned Sessions Judge, Morigaon in exercise of its revisional power.

3. The brief facts of the case is that the petitioner preferred a criminal complaint which was registered as CR Case No. 844/2007 arraying the respondent Nos. 2 & 3 herein as the accused. The accused/respondent Nos. 2 & 3 appeared before the learned Court. The prosecution adduced as many as 4 (four) witnesses, which were duly cross-examined by the defence. The accused persons/respondent Nos. 2 & 3 herein were examined under Section 313 CrPC.

4. Thereafter, on 14.12.2010, the accused/respondent No. 2 filed a petition, which was registered as Petition No. 3058/2010 by submitting a list of witnesses. The names of the said witnesses are as under:-

- | | |
|-------|---|
| (i) | Namita Daity W/o Ashok Daity |
| (ii) | Chandra Bhujan Pandey S/o Sri Baldeo Pandey |
| (iii) | Rajiv Kishore Singh S/o Sri Jaldhar Singh |
| (iv) | Priti Singh D/o Rajiv Kishore Singh |

5. However, the aforesaid petition was withdrawn on the same date itself. Subsequently, on the same date, i.e., 14.12.2010, the accused/respondent No. 2 filed another application under Section 311 CrPC with a prayer to re-cross-examine the prosecution witnesses, which was registered as Petition No. 3070/2010 and the same is quoted herein below:-

“A petition under Section 311 CrPC.

Madam,

The petition one of the accused of this case begs to state that the above cited case reach at the stage of defence evidence. After perusal of all evidence of witnesses were remain un-crossed. If an opportunity of re-cross-examination on material facts is not given to the petitioner, the petitioner and the accused persons shall be deprived of getting justice.

It is therefore prayed that your Honour may be pleased to give an opportunity to the petitioner to re-cross the witnesses of the complain side under the provision of Section 311 CrPC and for the act of which the petitioner shall ever pray.”

6. The learned Magistrate after hearing the learned counsels for the parties, dismissed the Petition No. 3070/2010 by order dated 19.10.2012 on the ground that the said petition was filed without citing any reason and that simply stating the some material points had been remained uncrossed cannot be a reason to allow re-cross-examination and the same would amount to filling up of lacuna. However, the learned Magistrate fixed the matter for cross-examination of defence witnesses on 02.11.2012, though list of witnesses submitted were withdrawn.

7. The respondent No. 2 being aggrieved by the said order dated 19.10.2012, preferred Crl. Revision No. 62/2012 and at the same time, the opposite party/petitioner herein preferred Crl. Revision No. 55/2012 assailing the part of the order whereby the matter was fixed for defence witnesses on 02.11.2012 for the reason that even after withdrawal of the list of defence witnesses, the matter was fixed for cross-examination of DWs. The learned Sessions Judge, Morigaon took up both the matters together and passed the impugned common judgment and order dated 17.06.2013.

8. Placing reliance on the determinations made by the Hon'ble Apex Court in the case of ***P. Sanjeeva Rao Vs. State of Andhra Pradesh*** reported in **(2012) 7SCC 56**, the learned Sessions Judge, Morigaon had concluded that the learned Sub Divisional Judicial Magistrate (S), Morigaon failed to examine the matter judiciously and passed the

impugned order mechanically, which was not tenable in law. Accordingly, the matter was remanded to the learned Court below with a direction to allow the accused persons for further cross-examination of prosecution witnesses on the basis of the limited points, which were mentioned in the criminal revision petition.

9. It is true that in the case of ***P. Sanjeeva Rao*** (supra), the Hon'ble Apex Court had laid down the principles and parameters for exercising of power under Section 311 CrPC. However, the learned revisional Court had not recorded any conclusion how the principle laid down in the case of ***P. Sanjeeva Rao*** (supra) was made applicable in the given fact of the case.

10. It is also true that the denial of an opportunity to recall a witness for cross-examination may amount to condemning the person without giving him the opportunity to challenge the correctness of the version and the credibility of the witnesses. However, it is equally well settled that re-cross-examination cannot be granted on mere asking of it.

11. In the case in hand, by filing a petition No. 3070/2010, the respondent No.2 prayed for re-cross-examination of the witnesses, no reasons whatsoever was cited in the petition. Subsequently, before the learned Sessions Judge, Morigaon, the ground that earlier lawyer could not properly cross-examine the witnesses was taken and accordingly, the same was allowed by the learned Sessions Judge, Morigaon. However, such application cannot be allowed only for the reasons that the concerned lawyer was insufficient and could not properly cross-examine the witnesses and missed some vital points. Allowing such application will amount to fill up lacuna, which is not the purpose and object of enactment of Section 311 CrPC. That being the position, this Court is of the view that learned Sessions Judge, Morigaon had committed glaring illegality so far relating to allowing re-cross-examination of the prosecution witnesses which had already been examined, cross-examined and discharged.

12. Accordingly, the impugned order dated 19.10.2012 and the common judgment and order dated 17.06.2013 stands set aside. The order of the learned Magistrate dated 19.10.2012 is upheld, so far relating to fixing the date of examination of the defence witnesses, this Court is not inclined to interfere with the said order inasmuch as even in

absence of the list of witnesses, the defence cannot be deprived of its right to adduce evidence. Accordingly, this criminal petition stands allowed.

13. Copy of this order be communicated to the learned Trial Court so that the learned Trial Court can proceed with the matter in terms of its order dated 19.10.2012.

JUDGE

Comparing Assistant