

GAHC010052772020



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

Case No. : Crl.Pet./232/2020

GOLAP CH. BORAH AND 2 ORS.
S/O- LT. KHUDARAM BORA, VILL- MORNOIGURI, P.S. BIHPURIA, DIST.-
LAKHIMPUR, ASSAM

2: JYOTI BORAH
W/O- SHRI GOLAP BORA
VILL- MORNOIGURI
P.S. BIHPURIA
DIST.- LAKHIMPUR
ASSAM

3: PREMDHAR BORAH
S/O- LT. NOMAL CH. BORA
NO.3 TATIBAHAR
P.S. BIHPURIA
DIST.- LAKHIMPUR
ASSA

VERSUS

THE STATE OF ASSAM
REP. BY THE P.P., ASSAM

Advocate for the Petitioner : MR. N BARMAN

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY**

ORDER

27.05.2024

1. None appears for the petitioner on call. However, Mr. P. Borthakur, learned Additional Public Prosecutor for the State is present.
2. The present petition is filed under Section 482 of the Code of Criminal Procedure, 1973 assailing an order dated 09.01.2020 passed by the learned Additional Chief Judicial Magistrate, Lakhimpur, North Lakhimpur in G.R. Case No. 1547/2012 arising out of Bihpuria P.S. Case No. 421/2002 registered under Sections 120(B)/468/420 of IPC, whereby the prayer for adjournment made by the accused/petitioners was rejected and cross-examination of PW-1, namely Sri Bhuban Ch. Bhuyan, was dispensed with.
3. The impugned order dated 09.01.2020 reflects that on 09.01.2020 PW-1 Sri Bhuban Ch. Bhuyan was present before the learned trial Court to make his deposition. However, a petition being Petition No. 167 was filed on behalf of the present petitioners praying for an adjournment, on the ground that their learned engaged counsel had sustained fracture on his hand, leg and chest due to which, the learned engaged counsel was not able to appear before the Court to cross examine the PW-1. Accordingly, an adjournment was sought for. However, the learned Magistrate has rejected such prayer, on the ground that no supporting medical document has been annexed with such application and also for the reason that the matter has been pending since the year 2002.
4. This Court under its order 06.03.2020, called for the scanned copies of the case record, which has been received.
5. From the case record, it is seen that the trial is still at stage of examination of the prosecution witnesses. The record further reveals that the Investigating

Officer has not yet appeared before the learned trial Court below to testify. However, in the meantime, Bailable Warrant of Arrest has also been issued and other witnesses are not yet examined. The fact also remains that the ground seeking adjournment, in the considered opinion of this Court, was a genuine ground.

6. Considering the aforesaid and also considering that the other witnesses are yet to be examined, this Court is of the view that the accused/petitioners shall be granted a chance to cross-examine the PW-1.
7. Accordingly, the impugned order dated 09.01.2020 passed by the learned Additional Chief Judicial Magistrate, Lakhimpur, North Lakhimpur in G.R. Case No. 1547/2012 arising out of Bihpuria P.S. Case No. 421/2002 registered under Sections 120(B)/468/420 is set aside and quashed and it is provided that the learned trial Court below shall recall the PW-1 namely Sri Bhuban Ch. Bhuyan for cross-examination.
8. A copy of this order be forwarded to the learned trial Court below.
9. This criminal petition stands disposed of.

JUDGE

Comparing Assistant