

GAHC010067622021



2024:GAU-AS:13126

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

Case No. : Crl.Pet./376/2021

SIBANI CHANDA
W/O LATE SADHAN CHANDRA CHANDA
R/O GOPINATH COLONY P.O. JAMUNAMUKH, P.S. JAMUNAMUKH, DIST.
NAGAON, ASSAM

VERSUS

DIPTADEEP CHAKRABORTY
SON OF DIBYENDU CHAKRABORTY
FLAT NO. D-2, ABHISHEK APARTMENT,
MALIGAON, P.S. JALUKBARI
GUWAHATI-781012, DIST. KAMRUP (M), ASSAM

Advocate for the Petitioner : MR. P K DEKA, MS P SHILL, MRS. S ROY

Advocate for the Respondent : ,

**BEFORE
HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK**

ORDER

29-08-2024

Heard Mr. Pankaj Deka, learned counsel for the petitioner.

2. Aggrieved with the order dated 18.03.2021 passed by the learned Additional Chief Judicial Magistrate, Kamrup (Metro), Guwahati in a complaint case filed by her husband during his lifetime being C.R. Case No. 1526^C/2015 against the sole respondent whereby the learned Magistrate closed the evidence of the complainant before Charge fixing another date for necessary order, the petitioner filed this criminal petition praying amongst others to quash the said order dated 18.03.2021 of the learned Additional CJM, Kamrup (M), Guwahati passed in C.R. Case No. 1526^C/2015 and to grant her an opportunity to give her evidence as complainant.

3. In the present case, it is seen that pursuant to the order of the Court dated 14.03.2024, the petitioner took steps on the sole respondent by way of paper publication through the Registry of this Court and notice of this case (as a legal notice) was duly published and widely circulated in the vernacular (*Assamese*) newspaper, *Asamiya Pratidin* on 24.03.2024. To that extent, the petitioner also filed an affidavit in the matter on 06.04.2024 along with the original copy of the said newspaper *Asamiya Pratidin* dated 24.03.2024, wherein the said legal notice was published. However, the respondent did not appear. Hence the matter is taken up ex-parte.

4. Brief facts of the case is that the petitioner's husband Sadhan Chandra Chanda during his lifetime was looking for a residential accommodation in and around Maligaon area in Guwahati.

- 5.** The sole respondent on coming to know about the said fact, approached her husband and apprised him that he is the owner of a flat and is willing to sell his flat being Flat No. 1-B, Block-B, 1st Floor at Silvalaya Apartment, Jaymotinagor, Maligaon.
- 6.** Though some internal works were pending with regard to the said flat of the sole respondent, like toilet, electricity and water supply etc., the sole respondent assured her husband that it will be completed soon and the value of the said flat was fixed at sale price of Rs. 30,00,000/-.
- 7.** In good faith, the husband of the petitioner initially made a payment of Rs. 5,00,000/- and thereafter made subsequent payments through Cheques for the period from 29.04.2014 to 27.03.2015, in total amounting to Rs. 29,90,000/- that were credited to the State Bank of India Account No. 10823657207, Panbazar Branch of the respondent.
- 8.** The petitioner's husband with his relatives met one Balabhadra Deka, husband of the proprietor of M/s P.J. Construction, the original builder of said Silvalaya Apartment, who informed that the sole respondent had already mortgaged the said flat by taking bank loan of around Rs. 16,00,000/- from Union Bank of India, Basistha Branch, Beltola.
- 9.** On enquiring from the bank, the husband of the petitioner could come to know that the sole respondent took loan from the said Union Bank of India, mortgaging the said flat way back in the year 2012 and that the outstanding dues at the relevant point of time was around Rs. 15,00,000/-. It was also revealed that the sole respondent was found to be a defaulter and for that the concerned bank was taking steps against him.
- 10.** On coming to know about the said act of the sole respondent, the husband of the petitioner on 01.07.2015 filed the complaint petition against the said respondent for taking cognizance under Section 190(1)(a) of CrPC read with Section 200 CrPC that was registered as C.R. Case No. 1526^C/2015.
- 11.** After recording of the initial statements of the complainant side including her husband on 02.07.2015 and two other witnesses on 29.09.2015 under Section 202 CrPC, the learned Additional CJM, Kamrup (M), Guwahati on 12.10.2015 took cognizance of the offence against the sole respondent/accused.

12. During pendency of the said C.R. Case No. 1526^C/2015, husband of the petitioner, i.e., the complainant expired on 21.02.2017, leaving behind the petitioner and their minor son.

13. On 05.05.2017, the petitioner filed an application before the learned Additional CJM, Kamrup (M), Guwahati for substituting her name in place of her husband, the complainant that was accordingly considered by the learned Additional CJM, Kamrup (M), Guwahati and by order dated 31.08.2017 the petitioner stepped into the shoes of her late husband as complainant and proceeded with the case.

14. From the records of the case, it is seen that after her appearance in the matter, the complainant was absent on 28.12.2017, 11.04.2018, 31.05.2018, 06.07.2018, 03.11.2018, 22.01.2019, 15.03.2019, 17.05.2019, 02.07.2019, 26.09.2019 and 11.12.2019.

15. By order dated 26.09.2019 the learned Magistrate fixed the matter on 11.12.2019 for Evidence Before Charge (EBC), but on 11.12.2019 the complainant was absent with steps. As such, the learned Magistrate fixed the matter on 26.02.2020 for EBC with a direction that the complainant shall adduce their evidence.

16. On 26.02.2020 the day on which the matter was fixed for EBC, the complainant filed a petition for calling for the records of a money suit from the Court of the learned Civil Judge No. 2, Kamrup (Metro), Guwahati decided on 11.07.2019.

17. The learned Magistrate however, found that the complainant was delaying the matter and was not prepared to adduce evidence and rejected her prayer for calling for the records of said money suit and imposed a cost of Rs. 500/- to the accused and adjourned the matter in the interest of justice, fixing the matter on 05.05.2020.

18. In the meanwhile, the Covid-19 stepped in.

19. During the period of Covid-19 the matter was taken up on 06.10.2020 and it was fixed on 28.12.2020. On 28.12.2020 the matter could not be taken up for Covid-19 and it was fixed on 18.03.2021 for EBC.

20. From the records of the case it is seen that on 18.03.2021 the learned Magistrate found that the complainant was present and the accused was absent with steps and accordingly, fixed the matter on 03.06.2021 for EBC.

21. The said order of the learned Magistrate dated 18.03.2021 was found to be duly signed, but later it was found to be deleted and another typed order dated 18.03.2021 was passed, i.e., the impugned order, whereby the learned Magistrate closed the Evidence Before Charge (EBC) to be placed by the complainant.

22. The learned Magistrate in its order dated 18.03.2021 found that though the complainant was present, but the learned counsel representing the complainant submitted before the Court that the concerned Senior counsel for the complainant shall proceed with the examination of the complainant who was busy at the relevant point of time in another Court. As such, the learned Magistrate fixed the matter in the 2nd half of 18.03.2021.

23. In the afternoon at around 3:10 PM on 18.03.2021, the learned counsel for the complainant submitted that she is unable to examine the complainant in absence of the concerned Senior counsel for the complainant. Finding that the matter is an old pending one since 2015, pending at the stage of EBC and was delayed because of the complainant and that the adjournment cost of Rs. 500/- was yet to be deposited that was passed earlier on 26.02.2020 and since the learned counsel representing the complainant is unable to examine the said complainant in absence of the concerned Senior counsel of the complainant, the learned Additional CJM, Kamrup (M), Guwahati by its order dated 18.03.2021 came to the opinion that the complainant is delaying the trial seeking adjournment and thereby abused the process of the Court. Therefore, by the said order dated 18.03.2021, the learned Magistrate closed the EBC of the complainant and her witnesses.

24. Records of the case clearly reveals that on 18.03.2021 the learned Magistrate initially signed the order whereby it accepted the presence of the complainant, allowed the absence of the accused who remained absent with steps and fixed the matter on 03.06.2021 for EBC.

25. It is also a fact that when the said impugned order dated 18.03.2021 was passed by the learned Magistrate, it was within the Covid-19 period and the Hon'ble Supreme Court in a *Suo Moto* matter have already extended the limitation period from 15.03.2020 to 28.02.2022.

26. Moreover, the complainant was present on 18.03.2021 and as the concerned Senior counsel could not appear in the matter and examine the complainant, i.e., the petitioner, as seen from the impugned order dated 18.03.2021, the learned Magistrate passed the said

order.

27. It is well settled that for the fault of an engaged counsel, a litigant should not suffer.

28. It is also seen from the case record that the learned Civil Judge No. 2, Kamrup (Metro), Guwahati in the Money Suit No. 389/2015 that it was filed by the late husband of the petitioner and after his death the present petitioner and their minor son duly substituted in it as plaintiffs against the present sole respondent. It is also seen that by order dated 11.07.2019 the learned Civil Judge No. 2, Kamrup (Metro), Guwahati decreed the said Money Suit No. 389/2015 in favour of the petitioner for an amount of Rs. 29,90,000/- with interest @ 18% per annum from 29.09.2014, the first date of issuance of Cheque of Rs. 5,00,000/- to the defendant therein, i.e., the sole respondent herein till realization of the full and final amount.

29. After hearing the petitioner, on perusal of the case records and considering the entire aspect of the matter and, in exercise of the power conferred under Section 482 CrPC to prevent abuse of the process of the Court and to secure the ends of justice, the order dated 18.03.2021 passed by the learned Additional Chief Judicial Magistrate, Kamrup (Metro), Guwahati in C.R. Case No. 1526^C/2015 is hereby set aside and quashed, directing petitioner to appear before the learned Additional CJM, Kamrup (M), Guwahati in said C.R. Case No. 1526^C/2015 with a certified copy of this order within four weeks and to remain present on the subsequent dates in said C.R. Case No. 1526^C/2015 as fixed by the learned Additional CJM, Kamrup (M), Guwahati.

30. The petitioner shall also deposit the cost of Rs. 500/- as been directed by the learned Magistrate in its order dated 26.02.2020 passed in said C.R. Case No. 1526^C/2015 forthwith.

31. If on her appearance within four weeks, the learned Additional CJM, Kamrup (M), Guwahati for some reason cannot record the Evidence Before Charge of the complainant and her witnesses, the same shall be concluded on the dates as been fixed by the said Magistrate and on those dates, the petitioner and her witnesses shall remain present in said C.R. Case No. 1526^C/2015.

32. The interim order passed earlier on 27.07.2021 in this proceeding stands merged with

this order.

33. With the above observations and directions, this criminal petition stands allowed to the extent above.

JUDGE

Comparing Assistant