

GAHC010074032024



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

Case No. : Crl.Pet./403/2024

GAGAN KALITA
S/O LATE SUREN KALITA
R/O TOWN MANGALDAI
WARD NO. 5, (LAND B ROAD),
P.O. AND P.S. MANGALDAI
DIST. DARRANG, PIN- 784125, ASSAM

VERSUS

THE STATE OF ASSAM AND ANR
REP. BY THE PP, ASSAM

2:SRI BINAY KALITA
S/O LATE MAHADEV KALITA
VILL- BAR SADERI

P.O. BHOTANTA SADERI
P.S. PATACHARKUCHI
DIST. BARPETA
ASSAM

PIN-78132

Advocate for the Petitioner : MR. S A HUSSAIN

Advocate for the Respondent : PP, ASSAM

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

ORDER

Date : 08.04.2024

- 1.** Heard Mr. D. J. Haloi, learned counsel for the petitioner. Also heard Ms. A. Begum, learned Additional Public Prosecutor for the State.
- 2.** This application under Section 482 of the Code of Criminal Procedure, 1973 read with Article 227 of the Constitution of India has been filed impugning the order dated 30.01.2024 passed by the learned Sub-Divisional Judicial Magistrate(M), Bajali, Pathsala in NI Case No. 29/2019. The order which has been impugned in this case is quoted herein below:-

30-01-24

Complainant is present.

Accused is absent with step vide petition No.343/24 showing cause.

Perused the CR. On perusal, it is seen that vide order dated 16-12-23 the court observed that the case was pending at the stage of cross of PW since 10-04-23 and both the parties submitted that the settlement talk was going on.

As the case was pending for more than five years, hence both the parties were directed to remain present today for completion of the cross-examination of the complainant. However, even today the accused is absent. Hence, Petition No.343/24 is rejected. The cross-examination of the complainant and the witnesses is deemed declined.

Fixed 02-02-24 for S/D."

- 3.** The learned counsel for the petitioner has submitted that though in the impugned order, learned Sub-Divisional Judicial Magistrate(M), Bajali, Pathsala

has mentioned that the case was pending for more than five years, however, it has not been taken into consideration that after filing of the complaint case by the complainant on 03.10.2019 there was an outbreak of Covid pandemic due to which the progress of the case suffered and the parties appeared before the Court only on 05th May, 2022 and thereafter there was a talk of compromise going on between the parties.

4. The learned counsel for the petitioner has submitted that on 30.01.2024 when the impugned order was passed, the petitioner was not well. However, he has been deprived with his right to cross-examine the prosecution witnesses and the case has been fixed for examination of the accused under Section 313 of the Code of Criminal Procedure, 1973.

5. I have perused the impugned order.

6. It appears that when the impugned order was passed, there is no reflection in the said order that any submission was made by the learned counsel for the complainant for dismissing the application filed by the present petitioner on that day before the said court. It also appears that though the prayer for adjournment by the present petitioner was rejected by the learned Sub-Divisional Judicial Magistrate(M), Bajali, Pathsala mainly on the ground that the case is pending for last five years. However, it has not taken into consideration various causes for delay and the fact that a talk of compromise was going on between the parties.

7. The learned counsel for the petitioner has submitted that he is ready to pay the cost to the complaint, however, he may not be deprived of this right to cross-examine the prosecution witnesses.

8. Considering the submissions made by learned counsel for the petitioner

as well as learned Additional Public Prosecutor, this criminal petition is disposed of with a direction to the trial court to allow the petitioner to cross-examine the witnesses of the complainant, subject to payment of Rs.2,000/- (Rupees Two Thousand) to the complainant by the present petitioner.

9. It is also hereby made clear that the learned Sub-Divisional Judicial Magistrate(M) shall fix this case next for cross-examination of the complainant's witness, however, no adjournment shall be granted on that day on the behest of the present petitioner.

10. With the above observation, this criminal petition is hereby disposed of.

JUDGE

Comparing Assistant