

GAHC010079092024



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

Case No. : Crl.Pet./449/2024

BIMALANGSHU BHATTACHARJEE
S/O LATE B.B. BHATTACHARJEE,
R/O FLAT NO. 201-B, 2ND FLOOR,
GHARANA ENCLAVE, RAJGARH ROAD,
P.S. PALTAN BAZAR,
GUWAHATI-781007, DIST. KAMRUP (METRO), ASSAM

VERSUS

THE CENTRAL BUREAU OF INVESTIGATION (CBI) AND ANR
REPRESENTED BY STANDING COUNSEL, CBI

2:SRI BITUPAN SARMA BORDOLOI
S/O SADANANDA BORDOLOI
PERMANENT RESIDENT OF SANGIA CHOWK
JAMUGURIGHAT

DIST. SONITPUR
ASSAM
PIN-784180
PRESENT ADDRESS- A-8/502
GAMES VILLAGE
GUWAHATI-78102

Advocate for the Petitioner : MR. B K MAHAJAN, MR. D BORA, MR. N MAHAJAN, MR N J
DAS, MR. P K DAS, MR. A CHAUDHURY

Advocate for the Respondent : SC, CBI,

**BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND**

ORDER

Date : 30-07-2024

Heard Ms. N. Mahajan, learned counsel for the petitioner Bimalangshu Bhattacharjee, who has filed this application under Section 482/397/401 of the Code of Criminal Procedure, 1973 (the CrPC for short) with prayer for quashing the impugned order dated 05.04.2024 passed by the learned Special Judge (i/c), Additional Court No. 2, CBI, Chandmari, Guwahati in connection with Special Case No. 04/2022.

2. Heard Mr. M. Haloi, learned Special Public Prosecutor for the CBI.
3. Learned Special Public Prosecutor has accepted notice on behalf of the respondent No. 1 and thus no formal notice is required to be issued.
4. The order dated 05.04.2024 passed by the learned the learned Special Judge (i/c), Additional Court No. 2, CBI, Chandmari, is reflected herein below:

“(1) Case record is put before me as P.O. is on leave.

(2) Accused Bimalanghsu Bhattacharjee is present.

(3) PW-1 Sri Nishender Kumar Diwakar, Inspector, CBI, ACB, Guwahati is present as per preceding order dated 14.03.2024. It appears that on 30.01.2024 the witness was present and he had to be discharged as adjournment cost of Rs.2000/- was not paid by the defense side. CBI is represented by ld. P.P. Mr. N.K. Tiwari.

(4) This Court is ready at the Ijlaas just to record the cross-examination of the said witness. However, none of the advocate engaged by accused is present to cross-examine the witness. Therefore, the cross-examination of PW-1 is forfeited.

(5) PW-14 namely Sri A.K. Saini is examined-in-chief in part. His further examination-in-chief is reserved.

(6) *Seen Petition No. 265/24 filed on behalf of accused Bimalangshu Bhattacharjee inter-alia stating that examination-in-chief of PW-11 as well as other independent witnesses is yet to be completed and as such, the cross-examination of the Investigating Officer cannot be done. Ld. Counsel further submitted that if material contradiction, if any respect of PW-11 as well as others could not have been proved if the examination of the I.O. examined today. Heard and petition being vague and misleading is rejected. It is made clear that defense side shall be afforded opportunity to cross PW-11 in due course of trial.*

(7) *Fixing 22.04.2024 & 23.04.2024 for evidence."*

5. It is averred by the learned counsel for the petitioner that the order of forfeiting the cross examination of the IO cum Trap Laying Officer (TLO) has been erroneously forfeited as several witnesses were not cross examined and the IO's evidence is *sine qua non* to elicit any contradictions after recording the depositions of all the prosecution witnesses.

6. It is submitted on behalf of the respondents that earlier on 30.01.2024, the IO cum TLO who was examined as PW.1 was present but he was not examined and a cost of Rs.2000/- (Rupees Two Thousand) was imposed and the next date was fixed on 14.03.2024 but the witness did not turn up on 14.03.2024. The petitioner also did not deposit the cost imposed by the learned trial Court.

7. I have considered the submissions at the bar with circumspection. Witnesses are yet to be examined. The petitioner will be highly prejudiced if the Investigating Officer is not cross examined after the examination and cross examination of the witnesses. Contradictions as per Section 162 of the CrPC vis-à-vis Section 145 of the Indian Evidence Act, 1872 can only be elicited after cross examination of the witnesses vis-à-vis the cross examination of the IO cum TLO. For the interest of justice, the order dated 05.04.2024 passed by the learned Special Judge (i/c), Additional Court No. 2, CBI, Chandmari, Guwahati in

connection with Special Case No. 04/2022 is hereby set aside allowing the petitioner represented by the learned defence counsel to cross examine the IO, PW.1 in accordance with law. The learned trial Court may recall the IO for cross examination.

8. Petitioner is also directed to pay the cost imposed by the trial Court vide order dated 06.01.2024.

9. In terms of the above observations, this Criminal Petition stands disposed of.

JUDGE

Comparing Assistant