

GAHC010104642024



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

Case No. : Crl.Rev.P./201/2024

JAHEDUR HOQUE
S/O LATE ZAMAL UDDIN SK, R/O WARD NO. 14, HOQUE NAGAR, A.M. CO.
ROAD, P.O.-A.M. CO. ROAD, P.S.-DHUBRI, DIST-DHUBRI, ASSAM

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

2:REBEKA SULTANA AHMED
D/O RAIS UDDIN AHMED
R/O JHAGRARPAN PART 2
P.S.-DHUBRI
P.O.-JHAGRARPAN
DIST- DHUBRI
ASSAM

Advocate for the Petitioner : MR N J DAS

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND
ORDER

29.05.2024

Heard Mr N J Das, learned counsel for the petitioner.

2. The petitioner has filed this application under Section 397, read with Section 401 of the Code of Criminal Procedure, 1973 (CrPC, for short), praying for setting aside the impugned order dated 09.05.2024, passed by the learned Principal Judge, Family Court, Dhubri, in FC (Crl.) Case No. 138/2023.
3. Heard Ms A Begum, learned Additional Public Prosecutor for the State of Assam/respondent No. 1.
4. The learned Additional Public Prosecutor has accepted notice on behalf of the State of Assam/respondent No. 1, so, no formal notice is required to be issued.
5. The FC(Criminal) case has been initiated by the respondent No. 2, against the petitioner, with prayer for enhancement of maintenance under Section 127 CrPC. The petitioner has been paying maintenance @ Rs. 5,000/- per month, to the respondent No. 2, without fail.
6. Annexure-D of the petition reflects the orders dated 09.02.2024, 06.03.2024 and 03.04.2024, passed in the aforementioned case.
7. It is submitted that the petitioner had prayed for time to cross-examine the prosecution witnesses and vide order dated 09.02.2024, the next date was fixed on 06.03.2024. Thereafter, the respondent No. 2 had prayed for time on 06.03.2024 and 03.04.2024 and this case was fixed for cross-examination on 09.05.2024. Surprisingly vide order dated 09.05.2024, the learned trial Court has observed that the petitioner was

praying for adjournment time and again and the petitioner's prayer for adjournment was rejected and the cross-examination of respondent's witnesses was closed and this case was fixed for defence evidence.

8. It is submitted that the petitioner will be highly prejudiced because he has been cooperating with the proceeding, but as the order was passed by the Nodal Officer (Dhubri Election District) on 30.04.2024, directing the petitioner to receive the Polled Postal Ballots and to maintain effective record keeping of Postal ballots received back from the Service Voters with proper maintenance of register and drop box on daily basis, stored in the Strong Room, till 4th of June, 2024, the petitioner was, thus, unable to appear for cross-examination of the PWs, on 09.05.2024. The petitioner is willing to cooperate with the proceeding of the aforementioned case, but he will be unable to present before the learned Principal Judge, Family Court, Dhubri, till 04.06.2024. The petitioner will not be able to attend the Court on 31.05.2024, which is the next date fixed in connection with FC (Crl.) Case No. 138/2023.

9. I have considered the submissions at the Bar with circumspection.

10. I have perused the order of the Nodal Officer, Postal Ballot Paper Cell, Dhubri Election District, dated 30.04.2024, directing the petitioner to receive Polled Postal Ballots on daily basis, till 04.06.2024. The order is a part of Annexure-E of the petition and the order is reflected hereinbelow verbatim:-

“ No. PB-01/LS Election/2024/98

Dhubri, 30th April, 2024

ORDER

In view of the smooth conduct of General Election to Lok Sabha, 2024, Sri Jahedur Hoque, SDAA, DC's Office, Dhubri, is hereby directed to receive the Polled Postal Ballots and effective record keeping of Postal Ballots received back from the Service Voters (ETPBS) with proper maintenance of register and drop box on daily basis, which is to be stored in the Strong Room at the Treasury Office, Dhubri, till the completion (i.e., on 4th June, 2024) of General Election to Lok Sabha, 2024.

This order will come with immediate effect.

Nodal Officer,

Postal Ballot Paper Cell,

Dhubri Election District.”

11. After scrutinizing the Annexure-D and Annexure-E of the petition and after considering the submissions made at the Bar, the order dated 09.05.2024, passed by the learned Principal Judge, Family Court, Dhubri, in FC (Crl.) Case No. 138/2023, is hereby set aside and the petitioner is directed to appear before the learned Principal Judge, Family Court, Dhubri, after 4th of June, 2024 and cooperate with the proceeding without default.

12. In terms of the above observations, this criminal petition stands disposed of.

JUDGE

Comparing Assistant