

GAHC010137582024



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

Case No. : CRP(IO)/228/2024

AZAD KHAN
S/O. LT. MAZIR UDDIN AHMED KHAN, VILL. FARAMPASHA, P.O. AND P.S.
NILAMBAZAR, DIST. KARIMGANJ (ASSAM), PIN-788720.

VERSUS

MARIA TANIM
W/O. MD. AZAD KHAN, D/O. KUTUB UDDIN BORBHUIYAN, R/O.
MEHERPUR, HAILAKANDI ROAD, SILCHAR-5, P H BARAKPAR, P.O. AND
P.S. SILCHAR, DIST. CACHAR, ASSAM, PIN-788001.

Advocate for the Petitioner : MS. P BHATTACHARYA, MR B S DEKA

Advocate for the Respondent : MR M J QUADIR, MR. A K HANNAN

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

Date : 19.08.2024

Heard Ms. P. Bhattacharya, learned counsel for the petitioner and Mr. M.J. Quadir, learned counsel for the respondent.

2. In this petition, under Article 227 of the Constitution of India, the petitioner has put to challenge the correctness or otherwise of the order dated

20.03.2024, passed by the learned Principal Judge, Family Court, Cachar at Silchar, in F.C. (Civil) Case No. 9/2019.

3. It is to be noted here that vide impugned order dated 20.03.2024, the learned Principal Judge, Family Court, Cachar at Silchar ('trial Court', for short) has closed the evidence of P.W.1 and P.W.2 without cross-examination, rejecting the prayer of the petitioner for adjournment of the case.

4. Ms. Bhattacharya, learned counsel for the petitioner submits that only on one occasion, the petitioner could not remain present in the Court and therefore, the learned Principal Judge, Family Court, Cachar at Silchar has closed the evidence of P.W.1 and P.W.2 and unless the petitioner is allowed to cross-examine the witnesses, he would be gravely prejudiced, and that he is ready to cross-examine the witnesses of the respondent and therefore, Ms. Bhattacharya submits that one opportunity may be given to the petitioner to cross-examine the P.W.1 and P.W.2.

5. On the other hand, Mr. Quadir, learned counsel for the respondent has vehemently opposed the petition. He submits that the conduct of the petitioner is not at all satisfactory. Besides, he had already contracted second marriage pending disposal of this proceeding. Referring to the orders of the proceeding before the learned trial Court, Mr. Quadir has pointed out that on as many as twenty five dates, the petitioner remained absent and he has been delaying the proceeding before the learned trial Court. Mr. Quadir further referring to a decision of Hon'ble Supreme Court in the case of **Ishwarlal Mali Rathod vs. Gopal and Ors.**, reported in **(2021) 9 SCR 35**, submits that unnecessary adjournments should not be granted by the learned trial Courts, which in fact kill the justice, and that arrears are amounting because of such delay and dilatory tactics and asking repeated adjournments by the Advocates and

mechanically and in routine manner granting the same by the Courts, and from viewed from this stand point it cannot be said that the impugned order suffers from any infirmity and therefore Mr. Quadir has contended to dismiss the petition.

6. Having heard the submission of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record and also gone through the decision of Hon'ble Supreme Court in **Ishwarlal Mali Rathod** (supra), and also the orders passed by the learned trial Court on various dates from 27.02.2019 till 01.07.2024.

7. A careful perusal of the documents placed on record and also the documents placed before this court today by Mr. Quadir, specially from the certified copies of the orders of the learned principal Judge, Family Court, Cachar, Silchar and from his submission that the conduct of the petitioner is not at all satisfactory. The case was instituted in the year 2019 and till date no visible progress could be seen. Viewed from this stand point the learned Principal Judge, Family Court is perfectly right in closing the evidence of P.W.1 and 2.

8. But, it is also well settled that right to fair trial is a fundamental right as granted under Article 21 of the Constitution of India. And fair trial encompasses the interests of all the stakeholders of the system and it includes the grant of fair and proper opportunities to the person concerned, and the same must be ensured as this is also a human right.

9. While dealing with the importance of cross-examination, a Constitutional Bench of Hon'ble Supreme Court, in the case in the case of **Kartar Singh vs. State of Punjab**, reported in **(1994) 3 SCC 569**, has held that Section 137 of the Indian Evidence Act defines what cross-examination means and Sections

139 and 145 speak of the mode of cross-examination with reference to the documents as well as oral evidence. It is the jurisprudence of law that cross-examination is an acid-test of the truthfulness of the statement made by a witness on oath in examination-in-chief, the objects of which are:

- (i) to destroy or weaken the evidentiary value of the witness of his adversary;
- (ii) to elicit facts in favour of the cross-examining lawyer's client from the mouth of the witness of the adversary party;
- (iii) to show that the witness is unworthy of belief by impeaching the credit of the said witness;

and the questions to be addressed in the course of cross-examination are to test his veracity; to discover who he is and what is his position in life; and to shake his credit by injuring his character.

10. Again in the case of **Jayendra Vishnu Thakur vs. State of Maharashtra**, reported in **(2009) 7 SCC 104**, it has been held by the Hon'ble Supreme Court that right to cross-examine a witness, apart from being a natural right is a statutory right. Section 137 of the Indian Evidence Act provides for examination-in-chief, cross-examination and re-examination. Section 138 of the Indian Evidence Act confers a right on the adverse party to cross-examine a witness who had been examined in chief, subject of course to expression of his desire to the said effect. But, indisputably, such an opportunity is to be granted.

11. In the instant case, the learned Principal Judge, Family Court has closed the evidence of P.W.1 and P.W.2 without cross-examination by the petitioner. Even there is no visible infirmity in the order impugned; yet, keeping in mind the importance of cross-examination, as elucidated by Hon'ble Supreme Court, in the cases discussed herein above, and also in the interest of justice, this court is

of the view that one last opportunity is required to be given to him. Else, he will be deprived of his valuable right to impeach the credit of the said witness and also in establishing his case.

12. Under the given facts and circumstances, this court is inclined to set aside the impugned order, dated 20.03.2024. The learned Principal Judge, Family Court, Cachar, Silchar is directed to afford only **one opportunity** to the petitioner to cross-examine P.W.1 and P.W.2 and thereafter, proceed to hear and dispose of the case, in accordance with law.

13. It is submitted at the bar that the case has already been fixed on 03.09.2024. Accordingly, it is provided that the petitioner, on the date so fixed, shall appear before the learned Principal Judge, Family Court, Cachar, Silchar and complete cross-examination of P.W.1 and 2.

14. Though this court is inclined to allow this petition, yet we are not approving the conduct of the petitioner, which has direct bearing upon the delaying the present proceeding. He cannot be allowed to take the benefit of his own wrong. Having taken note of the same, this court is inclined to impose a cost of Rs.2000/ (Rupees two thousand) upon him, which shall be deposited before the Family Court so as to hand it over to the respondent.

15. In terms of above, this revision petition stands disposed of.

16. Interim order passed earlier stands vacated.

JUDGE

Comparing Assistant