

GAHC010148172024



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

Case No. : Crl.Pet./851/2024

MATLAB ALI AAND 6 ORS
S/O LATE MOYAN ALI
R/O VILL- HABLAKHA,
P.S. HAJO
DIST. KAMRUP, ASSAM

2: MD. JULHAS ALI
S/O LATE MOYAN ALI
R/O VILL- HABLAKHA
P.S. HAJO
DIST. KAMRUP
ASSAM

3: MD. BAKKA ALI
S/O LATE MOYAN ALI
R/O VILL- HABLAKHA
P.S. HAJO
DIST. KAMRUP
ASSAM

4: MD. JAINALL ALI
S/O LATE MOYAN ALI
R/O VILL- HABLAKHA
P.S. HAJO
DIST. KAMRUP
ASSAM

5: MD. SUBURUDDIN
S/O BAKKA ALI
R/O VILL- HABLAKHA
P.S. HAJO
DIST. KAMRUP
ASSAM

6: MD. SURMAN ALI
S/O BAKKA ALI
R/O VILL- HABLAKHA
P.S. HAJO
DIST. KAMRUP
ASSAM

7: MD. SAHAR ALI
S/O LATE TAIMIDDIN
R/O VILL- HABLAKHA
P.S. HAJO
DIST. KAMRUP
ASSA

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY THE PP, ASSAM

2:ASARUDDIN AHMED
S/O LATE JALU MANDAL
R/O VILL- HABLAKHA
P.S. HAJO
DIST. KAMRUP
ASSA

Advocate for the Petitioner : MR G GOSWAMI, MR P KATAKI, MR S SARMA
Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

28.10.2024

Heard Mr. S. Sharma, learned counsel for the petitioners. Also heard Mr. B. Sharma, learned Additional P.P., representing the State.

2. By filing this application u/s 528 of BNSS, 2023, the petitioners have prayed for quashing of the impugned order dated 06/05/2023 and 03/04/2024 passed by the learned Sessions Judge, Kamrup, Amingaon in Sessions case no.

243/ 2014, whereby the petitioners were not allowed for further cross examination of the investigating officer.

3. The case of the petitioners is that the prosecution examined 17 witnesses in Sessions case no. 243/2014 and the prosecution has taken 9 years to complete their evidence commencing from 2009 till 2017 and after recording of 313 statements of the accused petitioners, the defence had examined 4 witnesses.

4. In their statements u/s 313 Cr.PC, the accused/ petitioners stated that they had also sustained injuries in connection with the alleged incident for which above Sessions Case has been registered. Subsequently, the case was posted for argument. In the meantime, the accused/petitioners had filed a petition before the trial court u/s 311 Cr.PC for recalling of doctor for explanation of the injuries sustained by the accused/petitioners which was rejected by the trial court. The accused/petitioners challenged the said order before this court vide criminal petition No. 1123/2019 and this court directed the trial court to rehear the matter and thereafter, summons were issued to the medical officer and he was re-examined. Thereafter, the case was fixed for argument.

5. Further case of the petitioners is that they again filed a petition u/s 311 Cr.PC before the trial court for further cross-examination of the investigating officer and accordingly the IO was re-cross-examined. By that time one of the accused had been expired. On receipt of the police report, the case against the said accused was abated. However, the prayer for further cross-examination of the investigating officer was allowed to the extent that the defense counsel would not put any question to the IO in respect of 161 statements of witnesses

which were not stated or stated differently.

6. Learned counsel for the petitioners has submitted that the order dated 06/05/2023 and 03/04/2024 passed by the learned Sessions Judge, Kamrup, Amingaon in Sessions Case No. 243 of 2024 are bad in law as because due to embargo put by the Session court while cross-examining the IO caused grave injustice to the accused/ petitioners to the extent that the witnesses were not confronted as envisaged u/s 161 Cr.PC. The said contradictions are of great relevance for the purpose of proper adjudication of the case.

7. In response, learned Additional P.P. has submitted that the trial court has re-called the IO three/four times on the request of the accused/ petitioners and the witnesses were also contradicted from their statements recorded u/s 161 Cr.PC. The case is pending in the court for more than 10 years. On each and every order passed by the trial court, the accused petitioners prefer revision petition before this court as a result of which the case is pending in the court for last 10 years. As the learned counsel for the accused/petitioners got ample opportunity to cross-examine the investigating officer, further cross-examination of investigating officer is not required to get further more delay in the instant case. Hence, learned Additional P.P. prays for dismissal of this criminal petition.

8. Having heard the learned counsel for the parties and on perusal of the orders of the learned trial court, it is not in dispute that earlier the trial court considered the prayer of the accused/petitioners for re-cross-examination of the IO to contradict the statement of some witnesses. The so called embargo imposed by the trial court is permissible as the accused is not allowed to re-cross-examine the IO for an indefinite period by filing application one after

another.

9. Complete reading of [Section 311](#) Cr.P.C. and upon its meaningful construction, it is explicitly clear that the Legislature in its wisdom, by inserting this provision, has endowed discretionary power on the Court to find out the truth and render a just decision by exercising its discretionary authority at any stage of the trial to summon any person as witness or examine any person in attendance though not summoned as a witness or recall or reexamine any person already examined, who are expected to be able to throw light upon the matter in dispute. Invocation of the discretionary power under [Section 311](#) Cr.P.C. is circumscribed by certain riders and therefore, a Court is expected to use these powers judicially and not capriciously or arbitrarily. A relevant consideration for taking aid of this Section is to discover relevant facts or to obtain proper proof of such facts for a just decision of the case. The Legislature, while engrafting this provision, has equi-balanced the position so that neither the prosecution nor the defence can utilize it for filling up lacuna. The Court, while exercising such discretionary power, should not examine any person in attendance though not summoned as witness or recall or re-examine any person already examined as a disguise for a retrial or to change the nature of the case against either of the parties.

10. A criminal Court, while exercising power under [Section 311](#) Cr.P.C., is expected to effectuate the right to speedy trial. Precisely, the object of the provision is to do justice not only from the point of view of the accused and the prosecution but also from the point of view of an orderly society.

11. At this stage, it would be just and appropriate to make judicial scrutiny of the argument of learned Additional Public Prosecutor that application

under [Section 311 Cr.P.C.](#) at the behest of accused is not maintainable. The argument, on the face of it, appears to be alluring but not of substance on the touchstone of language employed therein. While it is true that powers under Section 311 [Cr.P.C.](#) are discretionary in nature and sole discretion rests on the Court but then any request, may it be at the behest of an accused, to summon any person as a witness or examine any person in attendance though not summoned as a witness, or recall or reexamine any person already examined, cannot be denied to him if it appears to the Court that his evidence is essential to the just decision of the case. Therefore, recording satisfaction, that evidence of the witness is necessary, is sine qua non for exercising power by a Court.

12. In the instant case, as I have already stated that the trial court allowed the petition of the accused/ petitioners for re-cross-examination of the IO and the witnesses were contradicted accordingly against their statements recorded u/s 161 Cr.PC.

13. Hon'ble Supreme Court in the case of Rajaram Prasad Yadav Vs. State of Bihar (2013) 14 SCC 461, which is reproduced as follows -

".....It is, therefore, imperative that the invocation of Section 311 Cr.P.C. and its application in a particular case can be ordered by the Court, only by bearing in mind the object and purport of the said provision, namely, for achieving a just decision of the case as noted by us earlier. The power vested under the said provision is made available to any Court at any stage in any inquiry or trial or other proceeding initiated under the Code for the purpose of summoning any person as a witness or for examining any person in attendance, even though not summoned as witness or to recall or re-examine any person already examined. Insofar as recalling and re-examination of any person already examined, the Court must necessarily consider and ensure that such recall and re-examination of any person, appears in the view of the Court to be essential for the just decision of the case."

14. As such, upon analysis of ambit and scope of Section 311 Cr.P.C., as envisaged by the authoritative legal precedents, in the backdrop of peculiar facts and circumstances of the instant case, this Court is of the view that the impugned order cannot be categorized as infirm or perverse. The learned trial Court has taken pain to examine all the pros and cons while declining prayer of the accused-petitioners in the light of trite law on the subject in question. Therefore, viewed from any angle, learned trial Court has not committed any manifest error of law in passing the impugned order warranting interference in exercise of inherent jurisdiction of this Court. In totality, indisputably, instant one is not a case wherein learned trial Court has abused the process of any Court or otherwise committed any patent error which has resulted in miscarriage of justice.

15. The upshot of above discussion is that the instant petition fails and the same is hereby dismissed. The trial court shall proceed with the case in accordance with law. As it appears that the Sessions case is pending in the court for more than 10 years, the trial court is directed to expedite the matter and dispose of the case at the earliest.

JUDGE

Comparing Assistant