

GAHC010180762024



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

Case No. : Crl.Pet./1093/2024

SHAKTI KUMAR BARI
S/O SURYAKANTA PRASAD BARI,
PERMANENT RESIDENT OF VILL- MADHOPUR, P.S. JAMUBAZAAR, IN THE
DISTRICT OF SIWAN (BIHAR).

VERSUS

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

2:SRI PRABHAT KUMAR SHARMA
S/O LATE BIKESHWAR SHARMA
R/O HOUSE NO 27
C/O PRASANNA SARMA
OPPOSITE CASARIO ENCLAVE JAIPUR
KHARGHULI
UZANBAZAR- 78100

Advocate for the Petitioner : G UDDIN, P ADHIKARI,P SHARMA

Advocate for the Respondent : PP, ASSAM,

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

ORDER

Date : 09.09.2024

- 1)** Heard Mr. G. Uddin, learned counsel for the petitioner. Also heard Mr. P. Borthakur, learned Additional Public Prosecutor for the State of Assam.
- 2)** This application under Section 528/529 of the BNSS, 2023 has been filed by the petitioner, namely, Shakti Kumar Bari impugning the Order dated 22.02.2024 passed by learned Judicial Magistrate First Class, Kamrup(Metro) in PRC Case No.541/2021.
- 3)** Learned counsel for the petitioner has submitted that the present petitioner is facing a trial for charges under Sections 279/304A of the Indian Penal Code before the Court of learned Judicial Magistrate First Class, Kamrup(Metro).
- 4)** It is submitted that the learned counsel for the petitioner that on 22.02.2024, the PRC Case No.541/2021 was fixed for examination of prosecution's witnesses.
- 5)** On that day, the PW-1 was examined however, no counsel for the accused(the petitioner) turn up for cross-examining the PW-1 and, therefore, the trial court dispensed with the cross-examination of PW-1 and fixed the case for examination of remaining witnesses on the next date.
- 6)** The learned counsel for the petitioner has submitted that on the day when the impugned order was passed i.e., on 22.02.2024, the petitioner was

not present in the Court and he had filed an application to that effect. However, when PW-1 was examined, the counsel for the petitioner was also not found present in the Court.

7) The learned counsel for the petitioner submits that as the petitioner's counsel had some health issues, he could not appear before the Court to cross-examine the PW-1.

8) The learned counsel for the petitioner has submitted that thereafter on the next date fixed i.e., on 30.05.2024, the petitioner had filed an application for recalling the witnesses i.e., PW-1 for examination however, he was advised not to press the same and, therefore, the said application was not pressed by the counsel.

9) Learned counsel for the petitioner submits that if the PW-1 is not allowed to be cross-examined, the petitioner who is facing trial before the Court of learned Judicial Magistrate First Class, would be held to be prejudiced.

10) The learned counsel for the petitioner has also submitted that the PRC Case No.541/2021 is fixed for examination of further prosecution witnesses on 03.12.2024.

11) Considering the facts and circumstances of this case, this Court is of the considered opinion that unless the veracity of testimony of PW-1 is tested in cross-examination the petitioner may be prejudiced. The difficulty which the PW-1 may have to suffer, due to his re summoning may be compensated by paying adequate cost to him.

12) In view of the above, this Criminal Petition is disposed of with a direction that the PW-1 may be again summoned for the purpose of cross-examination by the learned Trial Court, subject to the condition that on the day when PW-1 appears before the Trial Court, the petitioner shall pay a cost of Rs.5,000/- to

the PW-1 before cross-examining him. The payment of cost imposed would be condition precedent to the cross-examination of PW-1.

13) With above observations, this Criminal Petition stands disposed of.

JUDGE

Comparing Assistant