

GAHC010192032024



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

Case No. : Crl.Rev.P./356/2024

ASHRAFUL HOQUE
S/O AYNAL HOQUE
VILL- KOTERGAON,
P.O. LAKHIGANJ
P.S. BILASIPARA, DIST. DHUBRI, ASSAM
PIN-783345

VERSUS

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

2:SULTANA NARGISH RAHMAN
W/O ASHRAFUL HOQUE
D/O ABDUR RAHMAN
VILL- ADABARI PART-II

P.O. CHAGALCHORA
P.S. AND DIST. DHUBRI
ASSA

Advocate for the Petitioner : MR M Z SHAH, MD P RAHMAN

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

17.09.2024

1. Heard learned counsel Mr. M. Z Shah for the petitioner
2. This application has been filed by the petitioner under Section 438 read with Section 442 & 528 of the BNSS, 2023 challenging the impugned order dated 01.08.2024 passed in F.C.(CrI.) No. 130/2023 passed by the Learned Principal Judge, Family Court, Dhubri rejecting the prayer of the petitioner for filing his written statement. It was observed by the learned Trial Court vide the impugned order dated 01.08.2024, that the petitioner was accorded several opportunities to submit his written statement but the petitioner has failed to submit his written statement and thus the petition with prayer to file his written statement, was rejected. He was however allowed to submit his affidavit of disclosure of income, assets and liabilities, and this case was fixed for evidence of the respondent No. 2.
3. It is submitted on behalf of the petitioner that the petitioner is highly prejudiced by this order. He is posted at Jammu and Kashmir as Constable under the CISF The orders dated 20.06.2023 up to 23.11.2023 clearly reflects that notices could not be served upon the petitioner as the petitioner is posted at Jammu and Kashmir and the respondent No. 2 moved the Court and sought permission to serve the notice against the petitioner in his present place of posting, and vide order dated 10.01.2024, in F. C. Criminal No. 130/2023, the learned Trial Court directed the respondent No. 2 to serve the notice to the petitioner who is evading to accept notice in his ancestral home address.
4. It is submitted that the petitioner never tried to evade acceptance of notice but the petitioner could not contest the proceeding and file written statement as he was not granted leave. He was granted leave only from 02.09.2024 to 18.09.2024. Annexure-8 of the petition is the leave certificate of the petitioner.

The copies of the orders marked as Annexure-5 reveals that the respondent No. 2 took steps to serve notice on the petitioner, but finally notices were served on the petitioner, and the order dated 29.06.2024, passed by the learned Trial Court reflects that the petitioner prayed for time to file his written statement. Now, the petitioner is willing to contest the proceeding. The petitioner was absent continuously with steps from 15.07.2024 to 01.08.2024. Annexure-6 of the petition reveals that on 29.06.2024, the petitioner sought for time to file written statement.

5. I have considered the submissions at the Bar with circumspection 1 have also scrutinized the copies of the order marked as Annexure-5.
6. For the interest of justice, I deem it proper to direct the petitioner to appear before the learned Trial Court and file his written statement and contest the proceedings.
7. Considering all aspects and in view of my foregoing discussions, the petitioner is hereby directed to appear before the learned Trial Court and file his written statement and thereafter, contest the proceeding.
8. In terms of the above observation, petition is disposed of.

JUDGE

Comparing Assistant