

GAHC010194072024



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

Case No. : Crl.Rev.P./393/2024

RAHIM ALI @ ROHIM ALI
S/O BABUR ALI
R/O ALURBHUI (BOROGHOLA)
P.S. SALKOCHA
P.O. SILGARA
DIST. DHUBRI, ASSAM
PIN CODE- 783348

VERSUS

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

2:JWANGSAR BASUMATARY
S/O THANESWAR BASUMATARY
VILL- CHAKRASILA PART-II
P.O. SILGARA
P.S.KOKRAJHAR
DIST.KOKRAJHAR
ASSAM
PIN-78337

Advocate for the Petitioner : MR. M U MAHMUD, MRS. M SAIKIA, MR S ISLAM, MR S H MAHMUD

Advocate for the Respondent : PP, ASSAM,

**BEFORE
HONOURABLE MR. JUSTICE PARTHIVJYOTI SAIKIA**

ORDER

Date : 30.09.2024

Heard Mr. M.U. Mahmud, learned counsel appearing for the petitioner and Ms. S. H. Bora, learned Additional Public Prosecutor for the state of Assam.

2. This is an application under Section 438/442 of the BNSS, 2023 challenging the order dated 31.08.2024 passed by the learned Special Judge, POCSO, Kokrajhar in Special POCSO Case No. 38/2022.

3. The petitioner is facing trial before the learned Special Judge, POCSO, Kokrajhar. Some witnesses were examined and discharged after cross-examination. Thereafter, a new lawyer was appointed by the petitioner. The new lawyer found that the earlier lawyer did not ask some questions to PW-1 and PW-2 at the time of their cross-examination. Therefore, the petitioner filed an application before the learned trial court under Sections 137/138 of the Indian Evidence Act, 1872 praying for permission to recall the witnesses for further cross-examination.

4. The learned trial court refused the prayer of the petitioner on that ground that the petitioner was trying to fill up some lacunas.

5. I have considered the submissions made by the learned counsels of both sides.

6. The duty of the learned trial court is to administer justice. There is specific provision in the law recalling witnesses, who were earlier examined and discharged.

7. This Court is of the opinion that the view of the trial court is erroneous.

8. Therefore, the impugned order dated 31.08.2024 passed by the learned Special Judge, POCSO, Kokrajhar in Special POCSO Case No. 38/2022 is set aside.

9. The trial court is directed to recall PW-1 and PW-2 only for cross-examination

by the petitioner. After that, the Court shall proceed to dispose of the case in accordance with the procedures as laid down by law.

10. With the aforesaid direction, the revision petition stands disposed of.

JUDGE

Comparing Assistant