

GAHC010220672024



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

Case No. : Crl.Pet./1297/2024

SAFIQUL ISLAM LASKAR
S/O LATE AZIZUR RAHMAN LASKAR
R/OVILL- GOBINDAPUR, PART-III,
P.S. SILCHAR
P.O. EAST GOBINDAPUR
DIST. CACHAR, ASSAM
PIN-788101

VERSUS

JOY KUMAR SAHA
S/O LATE ANIL KUMAR SAHA
R/O N N DUTTA ROAD,
SILCHAR TOWN,
P.O. AND P.S. SILCHAR,
DIST. CACHAR, ASSAM
PIN-788001

Advocate for the Petitioner : MR. M H RAJBARBHUIYAN, MRS R CHETRI

Advocate for the Respondent : ,

:: BEFORE ::

HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

O R D E R

13.11.2024

Heard the learned counsel Mr. M.H. Rajbarbhuiyan appearing for the petitioner.

2. This is an application under Section 528 of the BNSS, 2023 challenging the judgment dated 10.09.2024 passed by the learned Addl. Sessions Judge (FTC), Cachar, Silchar in CrI. Revision No.80/2021 affirming the order dated 30.10.2021 passed by the learned Chief Judicial Magistrate, Cachar, Silchar in N.I. Case No.192/2015.

3. The complainant is a money lender by profession. He alleged that the present petitioner in order to repay money borrowed from him issued a cheque and on presentation, the said cheque was dishonoured by the Bank.

4. The petitioner's case is that on 08.10.2013 while he was returning from the Bank, he lost his SBI Pass Book along with cheque book and therefore he informed police immediately and Silchar P.S. G.D. Entry No.303 dated 08.10.2013 was registered.

5. The petitioner claimed that he never issued any cheque to the complainant and for that matter, he prayed before the trial court to send the cheque to a handwriting expert to examine his signature.

6. I have gone through the cross-examination portion of the evidence of the complainant.

7. Mr. Rajbarbhuiyan has relied upon a decision of the Hon'ble Supreme Court that was delivered in *Kalyani Baskar (Mrs.) -vs- M.S. Sampooranam (Mrs.)*, reported in

(2007) 2 SCC 258. Paragraph 12 of the said judgment is quoted as under:

“**12.** Section 243(2) is clear that a Magistrate holding an inquiry under CrPC in respect of an offence triable by him does not exceed his powers under Section 243(2) if, in the interest of justice, he directs to send the document for enabling the same to be compared by a handwriting expert because even in adopting this course, the purpose is to enable the Magistrate to compare the disputed signature or writing with the admitted writing or signature of the accused and to reach his own conclusion with the assistance of the expert. The appellant is entitled to rebut the case of the respondent and if the document viz. the cheque on which the respondent has relied upon for initiating criminal proceedings against the appellant would furnish good material for rebutting that case, the Magistrate having declined to send the document for the examination and opinion of the handwriting expert has deprived the appellant of an opportunity of rebutting it. The appellant cannot be convicted without an opportunity being given to her to present her evidence and if it is denied to her, there is no fair trial. “Fair trial” includes fair and proper opportunities allowed by law to prove her innocence. Adducing evidence in support of the defence is a valuable right. Denial of that right means denial of fair trial. It is essential that rules of procedure designed to ensure justice should be scrupulously followed, and the courts should be jealous in seeing that there is no breach of them. We have not been able to appreciate the view of the learned Judge of the High Court that the petitioner has filed application under Section 243 CrPC without naming any person as witness or anything to be summoned, which are to be sent for handwriting expert for examination. As noticed above, Section 243(2) CrPC refers to a stage when the prosecution closes its evidence after examining the witnesses and the accused has entered upon his defence. The appellant in this case requests for sending the cheque in question, for the opinion of the handwriting expert after the respondent has closed her evidence, the Magistrate should have granted such a request unless he thinks that the object of the appellant is vexation or delaying the criminal proceedings. In the circumstances, the order of the High Court impugned in this appeal upholding the order of the Magistrate is erroneous and not sustainable.”

8. I have considered the submissions made by the learned counsel Mr. Rajbarbhuiyan.

9. This Court is of the opinion that the reasons for which the prayer of the present petitioner was rejected by the learned trial court as well as by the learned revisional court, are not based on any satisfactory reason. If the said cheque is sent to a handwriting expert for examination of the signature of the petitioner, no prejudice would be caused to the complainant. The trial court should have allowed the prayer of the present petitioner. The learned revisional court also erroneously agreed with the decision of the trial court in spite of several decisions placed before him by the petitioner.

10. For the aforesaid reasons, the present criminal petition is allowed. The impugned judgment dated 10.09.2024 passed by the learned Addl. Sessions Judge (FTC), Cachar, Silchar in CrI. Revision No.80/2021 affirming the order dated 30.10.2021 passed by the learned Chief Judicial Magistrate, Cachar, Silchar in N.I. Case No.192/2015 is set aside.

11. The learned trial court is directed to send the disputed cheque to a handwriting expert for examination of the signature of the present petitioner to ascertain its authenticity. After receiving the Report, the trial court shall proceed to dispose of the case in accordance with the procedure as laid down by law.

12. With the aforesaid direction, the present criminal petition is disposed of.

JUDGE

Comparing Assistant