

GAHC010234192024



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

Case No. : Crl.Rev.P./455/2024

MD. JABIR HUSSAIN
S/O MD. SHAHJAHAN HUSSAIN
R/O DEHAJAN, NEAR DEHAJAN MASJID, P.O. DEMOW, P.S. MORAN, DIST.
DIBRUGARH, ASSAM

VERSUS

BENJIR NARFA AZAM AND ANR
W/O MD. JABIR HUSSAIN
D/O MUKIBUR RAHMAN
R/O GELEKEY GGS NO. 1 ROAD, P.O. AND P.S. GELEKEY, DIST. SIVASAGAR,
ASSAM

2:THE STATE OF ASSAM
THROUGH THE PUBLIC PROSECUTOR
ASSA

Advocate for the Petitioner : MR R CHAKRAVORTY, S RABHA

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA

ORDER

Date : 20-11-2024

Heard Mr. R. Chakravorty, the learned counsel for the petitioner and also
heard Mr. R.J. Baruah, the learned Addl. PP appearing for the State respondent

no. 2.

2. In pursuant to order dated 19.11.2024, the amended Cause Title has already been furnished.

3. This is an application u/s 528 of the BNSS, 2023 against the interim order dated 13.08.2024 passed by learned Sessions Judge, Sivasagar in Criminal Appeal No. 12(1) of 2023 whereby the order passed by learned SDJM (Sadar), Nazira in Misc. DV Case No. 1/2020 dated 16.03.2023 is confirmed expunging the evidence of DW-3.

4. It is submitted by Mr. Chakraborty, learned counsel for the petitioner that after conclusion of the evidence of the PWs they have filed the evidence in affidavit of three DWs and accordingly a date was also fixed for cross-examination. Accordingly, DW1 was duly cross-examined by respondent side. However, the adjournment had to be prayed for cross evidence of DW-2 and DW-3 in three occasions i.e. on 16.12.2022, 19.01.2023 and 14.02.2023 due to various reasons and on 16.12.2022 the PO was also on leave. But, on 06.03.2023 another petition for adjournment had to be filed for cross-examination of DW-2 and DW-3 wherein the learned Court below had considered the prayer of DW-2. However, the prayer of DW-3 was rejected as it was not found satisfactory and the evidence of DW-3 is accordingly expunged. On 16.03.2023 another petition was also filed for cross evidence of both the DW-2 and DW-3 and prayer for DW-3 was rejected as his evidence was already expunged. Against the said order, the petitioner filed an appeal before the learned Sessions Judge but the learned Appellate Court also passed a mechanical order and dismissed the order affirming the order passed by the learned Trial Court.

5. It is submitted by Mr. Chakraborty that there was no negligence or laches on the part of the respondent however, due to various reasons the prayer for adjournment had to be made for cross evidence of DW-2 and DW-3. DW-3 is a very vital witness for the petitioner as she is not related to the parties and is an independent witness. Hence her evidence is very vital for the petitioner. If the DW-3 is not allowed to be cross-examined, prejudice may be caused to the petitioner side as she is the only independent witness for the petitioner. He further submitted that the case is still at the stage of cross evidence of DW-2 and a date is fixed on 16.12.2024 for cross-examination of DW-2. Mr. Chakraborty has submitted that DW-3 will accordingly appear before the learned Court below for recording his cross evidence, if one more chance is given to DW-3.

6. Considering the submissions made by the learned counsel for both sides and on perusal of material on record, this Court is of the opinion that one more chance may be given for cross-examination of DW-3 who is one of the vital witness of the petitioner side. Accordingly the order of expunging the evidence of DW-3 dated 06.03.2023 and 16.03.2023 passed by the learned SDJM, Nazira his hereby set aside and quashed and the order passed by the learned Sessions Judge, Sivasagar in Criminal Appeal No. 12(1) of 2023 is also accordingly set aside directing the petitioner to appear before the learned Trial Court below with DW-3 for recording her cross evidence along with the DW-2. The learned Trial Court below will accordingly record the cross evidence of both DW-2 and DW-3 on the next date as already fixed.

With the above observations, the present revision petition is disposed of at the motion stage.

Comparing Assistant

JUDGE