

GAHC010244182017



2024:GAU-AS:12333

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

Case No. : Crl.Pet./965/2017

MERAJUDDIN AHMED
S/O. MD. MINHAJUDDIN AHMED, R/O. MASJID LANE, SANTIPUR, P.O. and
P.S. BHARALUMUKH, GUWAHATI-781009, DIST. KAMRUP M, ASSAM.

VERSUS

THE STATE OF ASSAM and ANR.

2:SMT. KAMALA DEVI

CLAIMING TO BE THE WIFE OF LT. PRAKASH KHATIK
R/O. B. BARUAH ROAD
MARAKHALI GHY.-781007 DIST. KAMRUP M
ASSAM

Advocate for the Petitioner : MR.M K NATH, MS.P BURAGOHAIN,MR.R MAZUMDAR,MS.P SARMA

Advocate for the Respondent : MS. R DE, PP, ASSAM

BEFORE
HON'BLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

06-12-2024

1. None appears for the petitioner on call.

2. Mr. P. Borthakur, learned Additional Public Prosecutor, Assam for the opposite party/respondent No. 1 is present and Mr. R. De, learned counsel for the complainant/opposite party/respondent No. 2 is present.

3. The present petition is filed under Section 482 of the Code of Criminal Procedure, 1973, assailing the impugned order dated 31.10.2017 for quashment of the proceeding of CR Case No. 2467/2008 for an offence committed under Section 138 of the Negotiable Instruments Act, 1881 read with Sections 406/420 IPC pending in the Court of learned Judicial Magistrate First Class, Kamrup (M).

4. The brief facts of the case is that the predecessor in interest of the respondent No. 2 filed the connected CR Case No. 2467/2008 praying for filing his evidence on affidavit-in-chief. However, prior to filing of his evidence on affidavit-in-chief in said CR Case No. 2467/ 2008, the original complainant, namely, Prakash Khatik, had expired on 23.05.2010. Subsequently, on an application filed by the present respondent No. 2, namely, Kamala Devi, the wife of the deceased complainant, the learned Trial Court by order dated 02.09.2010 by substituting her as complainant, allowed her to proceed with the case and accordingly, prosecuted the same.

5. On 05.12.2012, the present respondent No.2 filed her evidence-in-affidavit as PW-1 and an objection was raised by the accused/petitioner that after the death of the original complainant, i.e., the husband of the substituted complainant, the accused was entitled for discharge. However, such contention was rejected by the learned Trial Court by its order dated 31.10.2017.

6. Being aggrieved with the impugned order dated 31.10.2017, the present petition is filed.

7. The Hon'ble Apex Court in the case of ***Ashwin Nanu Bhai Vyas Vs. State of Maharashtra*** reported in ***AIR 1967 SC 983*** held that under Section 302(1) CrPC, the Court can authorise the conduct of the prosecution by any person and that the word 'any person' would include the legal heirs of the complainant.

8. In view of the aforesaid and in terms of the mandate of Section 302(1) CrPC, this Court is of the opinion that the respondent No. 2 being the wife of the deceased complainant stands on the footing of the 'any person' as envisaged under Section 302 (1) CrPC.

9. Accordingly, this Court finds no illegality or infirmity in the order dated 31.10.2017 passed by the learned Judicial Magistrate First Class, Kamrup (M) in said CR Case No. 2467/2008 and the accused/petitioner is not rightly discharged from the commission of offence only on the ground that the original complainant had expired.

10. Accordingly, this criminal petition stands dismissed. Registry to intimate this order to the learned Trial Court below.

JUDGE

Comparing Assistant