

GAHC010255422024



2024:GAU-AS:12083

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

**Case No. : Crl.Pet./1464/2024**

DR. RUBUL AHMED  
S/O LATE RAHMANUDDIN AHMED  
R/O VILL- TALGURI,PANCHAGAON  
P.O. DHANTOLA BAZAR  
P.S. ABHAYAPURI  
DIST. BONGAIGAON, ASSAM

VERSUS

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

2:SUMANA YASMIN  
D/O LT. SADEQUE ALI  
R/O WARD NO. 9  
BIDYAPARA  
P.O. AND P.S. DHUBRI

DIST. DHUBRI  
ASSA

**Advocate for the Petitioner** : MRS K DEVI, MS S A KHALIFA,MR. J KALITA

**Advocate for the Respondent** : PP, ASSAM,

**BEFORE  
HONOURABLE MRS. JUSTICE MITALI THAKURIA**

**ORDER**

**Date : 02.12.2024**

Heard Mr. J. Kalita, learned counsel for the petitioner. Also heard Ms. S. H. Bora, learned Additional Public Prosecutor for the State respondent No. 1.

**2.** This is an application under Section 528 of BNSS, 2023 *read with* Article 227 of the Constitution of India for setting aside the impugned order dated 20.09.2024, passed by the learned Judicial Magistrate 1<sup>st</sup> Class, Dhubri in C.R. (DV) Case No. 1530/2021, whereby the cross-examination of the complainant witnesses was dispensed with.

**3.** It is submitted by Mr. Kalita, learned counsel for the petitioner, that the present petitioner, as respondent No. 1, could not appear before the learned Trial Court below on several occasion only because of the illness of his mother, who was also one of the respondent in the said case and was a patient of cancer and ultimately, after her prolonged illness, she died on 15.11.2024. As the petitioner and the other respondents had to be busy for her treatment, they were not in a position to appear before the learned Trial Court below. However, presently, he is ready and willing to appear before the learned Trial Court below and to contest the case accordingly. But on 20.09.2024, the cross-evidence of the PWs was dispensed with by the learned Court below and the case is now fixed for final argument. Thus, he submitted that if the case is heard *ex parte*, there will be prejudice caused to the petitioner and hence, he prayed to give

one more chance to the present petitioner to appear before the learned Trial Court below to cross-examine the PWs and also prayed to allow the petitioner to allow his evidence, if any.

**4.** Ms. Bora, learned Additional Public Prosecutor, submitted in this regard that the present petitioner may be directed to appear before the learned Trial Court below with an appropriate application which may be considered by the learned Trial Court below accordingly.

**5.** After hearing the submissions made by the learned counsels for both sides and also on perusal of the order dated 20.09.2024, passed by the learned Judicial Magistrate 1<sup>st</sup> Class, Dhubri in C.R. (DV) Case No. 1530/2021, it is seen that the learned Trial Court below passed a detail order wherefrom it is seen that for last 10 dates, the respondent No. 1/present petitioner failed to appear before the learned Trial Court and also did not pay any interim maintenance, as directed. So, considering his long absence, the order was passed by the learned Trial Court below whereby the cross-examination of the PWs was dispensed with and the case was fixed for final argument. Thus, it is seen that no illegality or irregularity has been committed by the learned Trial Court below while passing the impugned order. However, for the interest of justice, one chance may be given to the present petitioner to cross-examine the PWs.

**6.** In view of above, the learned Trial Court below is hereby directed to give one more chance to the present petitioner to cross-examine the PWs. Further, as it is submitted by the learned counsel for the petitioner that the next date of the case is fixed tomorrow, i.e. on 03.12.2024, for final hearing, the petitioner

is, accordingly, directed to appear before the learned Trial Court below and to proceed with the cross-examination of the PWs.

**7.** In terms of above, this criminal petition stands disposed of.

**JUDGE**

**Comparing Assistant**