

GAHC010259522022



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

Case No. : Crl.Rev.P./221/2023

MD. MESER ALI @ BATAHU
S/O MD. SAHARAL ALI, R/O VILL.-SIMINA (DAKHIN SULIKATA), P.S.-
PALASHBARI, DIST.-KAMRUP, ASSAM, PIN-781128.

VERSUS

THE STATE OF ASSAM AND ANR
REP BY P.P., ASSAM

2:MRS. NILIMA BIBI
W/O MD. ALTAF ALI
R/O VILL.-SIMINA (DAKHIN SULIKATA)
P.S.- PALASHBARI
DIST.- KAMRUP
ASSAM
PIN-781128

Advocate for the Petitioner : MR. B D KONWAR SR. ADV.

Advocate for the Respondent : MR. J ABBAS (R-2)

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA**

ORDER

28.02.2024

Heard Mr. B. D. Konwar, learned Senior counsel assisted by Ms. V. V. Thanyu, learned counsel for the petitioner. Also heard Mr. D. Das, learned Additional Public Prosecutor for the State respondent as well as Mr. J. Abbas, learned counsel for the respondent No.2.

2. This is an application filed under Section 397 *read with* Section 482 of the Code of Criminal Procedure, 1973 challenging the impugned order dated 11.07.2022 passed by the learned Additional Sessions Judge-Cum-Special Judge (POCSO), Kamrup, Amingaon, in Special POCSO Case No. 36/2021, whereby, the prayer made by the engaged defence counsel on behalf of the accused/petitioner has been rejected.

3. It is submitted by the learned Senior counsel, Mr. Konwar that on 11.07.2022 the case was fixed for recording the statement of the informant and the victim, and on the same day the engaged defence counsel was busy in another Court and his junior counsel appeared on his behalf and prayed to fix the matter at 2 P.M. But, suddenly, the engaged defence counsel fell ill and accordingly, prayer was made to examine the victim and the informant on another date. But, the learned Additional Sessions Judge-Cum-Special Judge (POCSO), Kamrup, Amingaon, did not consider his prayer and recorded the statement of the informant as well the victim without considering his ground of illness and the matter proceeded accordingly.

4. He further submits that at present the case is fixed on 15.03.2024 for recording the evidence of the Investigating Officer and accordingly, he prays for giving a chance to the accused/petitioner to cross examine the informant and the victim, otherwise, prejudice will be caused to the present petitioner. Thus, this application has been preferred by the accused/applicant for setting aside and quashing of the order dated 11.07.2022, allowing the present petitioner to cross examine the informant as well as the victim of this case.

5. Per contra, Mr. Das, learned Additional Public Prosecutor has submitted that the learned Trial Court has committed no error or mistake while rejecting the prayer made by the engaged defence counsel, as it is mandatory in law to record the evidence in POCSO case in day to day basis and also expeditious trial is required so that matter may be disposed at the early stage. It is not the case where the accused/petitioner was not given chance to cross examined the informant and the victim of this case. The impugned order dated 11.07.2022 passed by the Trial Court, reveals that the matter was fixed at 2 P. M. to accommodate the engaged defence counsel. However, the engaged defence counsel could not appear before the Trial Court and accordingly, the evidence of minor victim as well as informant was recorded by the said Court. However, he raised no objection; if the accused/petitioner is given a chance to cross examine the informant as well as the victim with exemplary cost.

6. On the hand, Mr. Abbas, learned counsel for the respondent No.2 has submitted that the learned Special Judge had rightly passed the order and recorded the statement of the informant as well as the victim. He also submits that the victim is a minor who cannot be asked to appear before the Trial Court repeatedly. In the same time, the mandate of Section 309 of Cr. P. C. and Section 35 of POCSO Act, it is provided that the evidence of the child shall be recorded within a period of 30 days of Special Court taking cognizance of the offence and reasons for delay, if any, shall be recorded by the Special Court. Thus, there is no reasons to make any interference in the impugned order dated 11.07.2022 passed by the learned Trial Court.

7. After hearing the submissions made by the learned counsels of both sides as well as after perusing the case record, it is seen that the engaged defence counsel was accommodated and accordingly, the matter was fixed at 2 P. M for hearing, but, the engaged defence counsel was unwell and he was not in a position to cross examine the victim as well as the informant on the said date. The learned Trial Court made an observation that the victim who is 7 years old child has been sitting in the Court premises since 10 A.M. and hence, the said Court deemed fit to reject the prayer made by the engaged defence counsel and accordingly, the statement of the victim and the informant was recorded.

8. Apparently, there is no illegality and irregularity found in the order passed by the learned

Special Judge, but, it is seen that the adjournment was prayed for, only on the ground of illness of the engaged defence counsel who was supposed to cross examine the victim and the informant on the date fixed. So considering the ground of illness, which has been taken by the engaged counsel, I find that one more chance should be given to the accused/petitioner to examine the victim as well as the informant, otherwise, prejudice may be caused to the accused/petitioner, as the case has been charge-sheeted under the POCSO Act.

9. Considering the above circumstances of this case and also for the end of justice, one more chance is given to the accused/petitioner to cross examine the victim as well the informant. Accordingly, the Special Judge (POCSO), Kamrup, Amingaon shall allow the accused/petitioner to cross examine the victim as well as the informant prior to examining the I.O of this case. The informant has already appeared today, through his engaged counsel. Thus, the informant/victim as well as the petitioner are hereby directed to appear before the Special Judge (POCSO), Kamrup, Amingaon on 15.03.2024 and accordingly, the said Court will record the cross examinations of the victim as well the informant by imposing necessary exemplary cost.

10. With above observation, this criminal revision petition stands disposed of.

JUDGE

Comparing Assistant