

GAHC010274972023



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

Case No. : Crl.Rev.P./548/2023

BASIR ALI MANDAL
S/O CHANMIYA MANDAL
R/O VILL- PUB ANKARBARI
P.S. DHALIGAON,
DIST. CHIRANG, ASSAM
PIN-783385

VERSUS

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

2:SMT. KESO MADHUA
W/O KANDU MADHUA
VILL- PUB ANKARBARI
P.S. DHALIGAON

DIST. CHIRANG
ASSAM
PIN-78338

Advocate for the Petitioner : MR. B J MUKHERJEE

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE PARTHIVJYOTI SAIKIA**

ORDER

24.06.2024

Heard Mr. B J Mukherjee, learned counsel for the petitioner as well as Mr. D. Das, learned Additional Public Prosecutor, Assam for the State Respondent and Mr. A Boro, learned counsel for the respondent no. 2.

This is an application filed under Section 397 CrPC read with Section 401 of the said Code challenging the order dated 17.11.2023 passed in Special POSCO Case No. 05/2022 by the learned Special Judge, Chirang.

The petitioner is facing trial before the court below. He was defending by a Legal Aid Counsel. At one point of time, the petitioner felt that the Legal Aid Counsel was not properly doing the case and, therefore, he engaged one private lawyer to defend him and the new lawyer found out that the cross-examination of the witnesses were not properly done leaving behind several important questions. Therefore, the petitioner filed an application to that effect. But the trial court did not agree with the petitioner and rejected his prayer.

Mr. Mukherjee has relied upon a decision of the Hon'ble Supreme Court that was rendered in *Rajaram Prasad Yadav v. State of Bihar and Another*, reported in (2013) 14 SCC 461. Paragraph 17.10 of the of the said judgment is quoted as under:

“Exigency of the situation, fair play and good sense should be the safeguard, while exercising the discretion. The court should bear in mind that no party in a trial can be foreclosed from correcting errors and that if proper evidence was not adduced or a relevant material was not brought on record due to any inadvertence, the court should be magnanimous in permitting such mistakes to be rectified.”

Objecting to the prayer made by the petitioner, Mr. Boro has relied upon a decision of this Court that was rendered in *Sazzadur Rahman v. State of Assam and Ors*, reported in *2020 (4) GLT 1*. In this case, this court rejected the prayer of the petitioner on the similar circumstances which is involved in the present case. After hearing the learned counsel for both the sides, I am of the considered opinion that the petitioner should be given an opportunity to further cross-examination of the witnesses, who are already examined as prosecution witnesses. For this reason, the present criminal revision petition is allowed. Therefore, the impugned order dated 17.11.2023 passed in Special POSCO Case No. 05/2022 by the learned Special Judge, Chirang is set aside. The trial court is directed to give an opportunity to the petitioner to further cross-examine the prosecution witnesses, who are already examined. With the above, the criminal revision petition is disposed of.

JUDGE

Comparing Assistant