GAHC010062822020

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

Case No. : Crl.Pet. 267/2020

1:ABDUL HAI
S/O- ASODDI AK, VILL- DURAHATI, P.O- TISTARPAR, P.S- DHUBRI, DIST- DHUBRI, PIN- 783334

VERSUS

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

2:BEGUM ATIFA SULTANA
W/O- ABDUL HAI
D/O- ABDUL HAI
VILL- BATUATALI
P.O- BALAJAN
P.S- GOLAKGANJ
DIST- DHUBRI
ASSAM
PIN- 78333

Advocate for the Petitioner : MR. L R MAZUMDER

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

Date : 17-03-2020

Heard Mr. L.R. Mazumder, learned counsel for the petitioner and Mr. B.J. Dutta, learned Additional Public Prosecutor for the State of Assam.

In this petition preferred under Section 482, Code of Criminal Procedure, 1976 (the CrPC, for short), the petitioner who is facing prosecution as an accused, in PRC Case No. 949/2019, presently pending before the Court of learned Judicial Magistrate, 1st Class, Dhubri (the trial Court, for short), has assailed the order dated 11.10.2019 passed by the learned trial Court as well as an order dated 19.12.2019 passed by the learned Sessions Judge, Dhubri. In view of the order going to be passed today, no notice is being issued to the respondent no. 2.

It is pleaded on behalf of the petitioner that his wife had lodged a First Information Report (FIR) against him and his other family members alleging, inter-alia, that she was treated with cruelty by the accused persons. On receipt of the FIR, a case being Dhubri Police Station Case No.171/2019, was registered under Section 498A, IPC and after completion of the investigation, a charge sheet had been submitted against the petitioner and another finding a prima facie case made under Section 498A, IPC. On receipt of the charge sheet, process was issued for appearance of the petitioner as the accused to stand the trial. On receipt of the summons, the petitioner had appeared before the learned trial Court and on prayer being made, he was allowed to go on bail. It is further averred that on 16.08.2019, the petitioner appeared before the learned trial Court but on that day, the prosecution witnesses were found absent though summons was duly served upon the informant-wife for her evidence. The learned trial Court on 16.08.2019 issued bailable warrant of arrest of Rs. 10,000/- against the informant-wife of the petitioner for securing her presence as a prosecution witness and the case was posted on 11.10.2019. On 11.10.2019, the informant-wife of the petitioner appeared before the learned trial Court and on her such appearance, the learned trial Court proceeded to record her evidence. On 11.10.2019, the petitioner did not appear before the learned trial Court. A petition being petition no. 2561/2019 was filed on behalf of the petitioner before the learned trial Court stating the reason of absence of the petitioner on that day. The said petition i.e. petition no. 2561/2019 was filed by a learned counsel on behalf of the petitioner's learned engaged counsel, Md. Manjul Hoque stating further that the petitioner's learned engaged counsel, Md. Manjul Hoque was not in a position to appear before the learned trial Court on that day due to his physical indisposition and it was prayed before the learned trial Court to adjourn the case for the day and to fix another

date. The learned trial Court in its order dated 11.10.2019 had observed that the petitioner by filing a petition no. 2561/2019 had showed his cause of absence. It was further observed that at the time of hearing the learned counsel who had filed the petition, was found absent on call. Observing so, the petition no. 2561/2019 was rejected by the learned trial Court and it proceeded to record the evidence of the informant-wife of the petitioner as P.W.1. After examination-in-chief, the learned trial Court dispensed her cross-examination under the provision of Section 309, CrPC while issuing the bailable warrant of arrest against the petitioner as the accused person. The said order dated 11.10.2019 came to be challenged by the petitioner before the learned Sessions Court, Dhubri by way of a petition under Section 397, CrPC. But the learned Sessions Judge, Dhubri dismissed the revision petition, C.R. Case No. 38/2019 by an order dated 19.12.2019 holding that in view of absence of the petitioner as accused and his engaged counsel on 11.10.2019, the provision under Section 309(2)(C), CrPC is very much applicable and thus, there is no irregularity, illegality and/or impropriety in the order dated 11.10.2019.

From a perusal of the order dated 11.10.2019, it appears that the learned trial Court had observed that the accused had showed his cause of absence by filing the petition no. 2561/2019. No observation had been made as regards sufficiency or otherwise of the ground cited in the petition for the absence of the accused. The learned trial Court also did not record any observation as regards the ground of physical indisposition cited on behalf of the learned engaged counsel of the accused, Md. Manjul Hoque for that day. The learned trial Court had observed that when the petition no. 2561/2019 was taken up for hearing, the learned counsel who had filed the petition, did not appear in time. It was on that ground, the petition no. 2561/2019 appeared to have been rejected. From the averments made by the petitioner, it prima facie appears that the petitioner and his engaged counsel had made an earnest endeavour to bring the reasons for their absence on 11.10.2019 to the notice of the learned trial Court with the assistance of another learned counsel who had filed the petition no. 2561/2019 on their behalf. It was due to the absence of the other learned counsel who had filed the petition no. 2561/2019, on 11.10.2019 at the time of hearing on the said petition, the learned trial Court had rejected the said petition. It has further emerged that the presence of the informant-P.W.1 was secured before the Court on that day by issuance of a

bailable warrant of arrest on 16.08.2019 when she was found absent and the petitioner as the accused was in attendance. A prayer for adjournment for the petitioner was made for the first time before the learned trial Court only on 11.10.2019.

This Court is conscious of the fact that the trial of a case has to be concluded expeditiously but at the same time, it cannot be denied that reasonable opportunity should also be provided to an accused to defend his case. The trial Court can postpone or adjourn the trial from time to time, for reasons to be recorded, on such terms as it thinks fit, for such time as it considers reasonable in exercise of the powers conferred on it under Section 309, CrPC. In the case in hand, it is not that the trial of the case had been adjourned or postponed since a long time due to acts attributable to the petitioner at any point of time earlier to 11.10.2019.

Having due regard to the above fact situation obtaining in the present case and keeping in view the interests of the parties, this Court finds that to subserve the ends of justice, another opportunity shall be provided to the petitioner to cross-examine the informant-P.W.1 as the same is not going to cause any prejudice to any side. Thus, this Court deems it proper and appropriate to grant another opportunity to the petitioner herein who is facing trial in PRC Case No. 949/2019, to cross-examine the informant-P.W.1, subject to payment of reasonable cost. Accordingly, setting aside the order dated 11.10.2019 and 19.12.2019, mentioned above, it is directed that the learned trial Court shall provide another opportunity to the petitioner who is facing the trial, to cross-examine the informant-P.W.1 on a date to be notified by it, subject to payment of cost of Rs. 2,000/- to the informant-P.W.1 on the date of such appearance of the informant-P.W.1 for cross-examination.

With the observations made and directions given above, this petition stands disposed of. No cost.

JUDGE

Comparing Assistant