GAHC010065272024

2026:GAU-AS:15068

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

Case No. : Crl.Pet./364/2024

DIMBESWAR KALITA AND 4 ORS
S/O DODHI RAM KALITA, VILL AND P.O.-TEBITOLA, P.S.-TAMULPUR, DIST-BAKSA, ASSAM, PIN-781368

2: PRANJAL DEKA
S/O KANTESWAR DEKA
VILL- BALTIPAR
P.S.-TAMULPUR
DIST-BAKSA
ASSAM
PIN-781368

3: BINANDA BISWAS
S/O LATE AMULYA BISWAS
VILL- NO. 1 BAGRIKHUTI
P.S.-TAMULPUR
DIST-BAKSA
ASSAM
PIN-781368

4: SUNIL MANDAL
S/O LATE PARESH MANDAL
VILL- NO. 1 BAGRIKHUTI
P.S.-TAMULPUR
DIST-BAKSA
ASSAM
PIN-781368

5: DIPANKAR DEKA
S/O SRI AMULYA DEKA
VILL- SAHPUR
P.S.-TAMULPUR
DIST-BAKSA
ASSAM

PIN-78136

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR. M SARANIA, MR A SARANIA,MR R.BEZBARUAH,MR. P P GOGOI

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MRS. JUSTICE SHAMIMA JAHAN

ORDER

07.10.2026

1. Heard Mr. M. Sarania, learned counsel appearing for the petitioners. Also heard Mr. B. Sharma, learned APP appearing for the State of Assam.

2. By this application, filed under Section 482 of the Code of Criminal Procedure the petitioners have prayed for quashing and setting aside the impugned order dated 21.11.2023 passed by the learned District and Sessions Judge, Baksa whereby the prayer made by the petitioners for cross-examination of three prosecution witnesses was rejected. The petitioners have also prayed for setting aside the order dated 19.04.2022 passed by the learned Sessions Judge, Mushalpur whereby the right of the petitioners to cross-examine the said three witnesses was forfeited.

3. The case of the petitioners is that they had filed an application under Section 311 of the Code of Criminal Procedure seeking permission to cross-examine the said witnesses who had already been examined by the prosecution.

4. It is stated in the petition that on the date when PW Nos. 7, 8 and 9 appeared before the Court, the learned senior counsel for the defence could not cross-examine the said witnesses on genuine grounds, as he was unable to remain present before the Court. The learned junior counsel appearing for the petitioners accordingly sought an adjournment. However, by order dated 19.04.2022 the learned Court rejected the application for adjournment filed by the learned junior counsel for the petitioners and forfeited the right of the petitioners to cross-examine the said witnesses.

5. Thereafter, the petitioners filed an application under Section 311 of the CrPC seeking recall of PWs 7, 8 and 9 who had already been examined for the purpose of cross-examination. The learned Court considered the said application and by order dated 21.11.2023 rejected the same on various grounds. One of the grounds for rejection was that the petitioners had not challenged the order dated 19.04.2022 by filing any revision and therefore the said order had attained finality. The application under Section 311 of the CrPC was also rejected on the ground that it had been filed by the petitioners after a lapse of about 10 months from the date of the order dated 19.04.2022.

6. The learned Court further held that the defence was attempting to delay the disposal of the case and had therefore filed the said application under Section 311 of the CrPC seeking permission to cross-examine the aforesaid witnesses. It was further observed by the learned Court that one of the petitioners had threatened the said prosecution witnesses and asked them not to appear before the Court and depose. The learned Court further observed that despite such threats the witnesses had appeared before the Court and had deposed and that calling them again for the purpose of cross-examination would

cause difficulty. On the aforesaid grounds the learned Trial Court rejected the application filed under Section 311 of the CrPC.

7. The learned counsel appearing for the petitioners submits that, under Section 311 of the CrPC, the Court is empowered at any stage of the proceedings to recall and re-examine any witness if such course is necessary for the ends of justice. He submits that the present case relates to the double murder of a bank manager and a bank employee and therefore in the interest of justice, PW Nos. 7, 8 and 9 ought to be recalled and permitted to be cross-examined by the defence.

8. On the other hand, Mr. B. Sharma, learned APP submits that there is no infirmity in the order dated 21.11.2023 passed by the learned Trial Court and that sufficient and cogent reasons have been recorded by the learned Trial Court while rejecting the said application.

9. I have heard the learned counsel for the parties and have perused the case records. Section 311 of the CrPC empowers the Court at any stage of an inquiry trial or other proceeding to summon any person as a witness or to recall and re-examine any person already examined if his evidence appears to be essential for a just decision of the case.

10. In the instant case, it is seen that PW Nos. 7, 8 and 9 who were examined by the prosecution were not cross-examined by the defence. It is also seen that on 19.04.2022 the learned counsel for the petitioners had filed an application seeking deferment of the cross-examination of the said prosecution witnesses. However, the said application was rejected on the ground that the witnesses had appeared before the Court despite having allegedly been threatened by one

of the petitioners and was examined and discharged. Accordingly, the cross-examination of the said witnesses was not deferred and the right of the defence to cross-examine them was forfeited.

11. The petition filed by the learned counsel seeking adjournment for the purpose of cross-examination was registered as Petition No. 107/2022. The ground stated therein was that the learned Senior Counsel conducting the case was engaged in proceedings before other Courts and despite his best efforts could not remain present before the learned Trial Court.

12. The other learned counsel who had filed the respective Vakalatnama on behalf of the petitioners was also unable to appear before the learned Trial Court on account of physical ailments. The reasons for their non-appearance were duly stated in the said application however the same came to be rejected by the learned Trial Court.

13. It cannot be lost sight of the fact that the petitioners did not challenge the said order dated 19.04.2022 at the appropriate stage. Instead, they subsequently filed an application under Section 311 of the CrPC seeking recall of PW Nos. 7, 8 and 9 for the purpose of cross-examination which came to be rejected by order dated 21.11.2023.

14. However, since the order dated 19.04.2022 is also under challenge in the present petition the objection that the said order was not challenged at the appropriate point of time cannot by itself be taken into consideration for declining the relief sought by the petitioners.

15. The Hon'ble Supreme Court, in *Rama Paswan vs. State of Jharkhand*, reported in *(2007) 11 SCC 191*, has held as follows:

> "*9. The object of Section 311 is to bring on record evidence not only from the*

point of view of the accused and the prosecution but also from the point of view of the orderly society. If a witness called by the court gives evidence against the complainant, he should be allowed an opportunity to cross-examine. The right to cross-examine a witness who is called by a court arises not under the provisions of Section 311, but under the Evidence Act which gives a party the right to cross-examine a witness who is not his own witness. Since a witness summoned by the court could not be termed a witness of any particular party, the court should give the right of cross-examination to the complainant."

16. In view of the law laid down by the Hon'ble Apex Court, this Court is of the considered view that in the interest of justice, more so due to the fact that the prosecution witnesses being PW Nos. 7, 8 and 9 were never cross-examined, the petitioners be permitted to cross-examine the said witnesses.

17. It is therefore directed that the learned Trial Court shall fix a specific date for cross-examination of PW Nos. 7, 8 and 9 by the defence. The petitioners shall avail the said opportunity on the date so fixed and if the defence fails to cross-examine the said witnesses on that date, no further opportunity shall be granted to the petitioners for the purpose of cross-examination.

18. Accordingly, the order dated 21.11.2023 is hereby set aside and quashed. The order dated 19.04.2022 insofar as it relates to the rejection of Petition No. 107/2022 seeking adjournment for cross-examination of PW Nos. 7, 8 and 9 is also set aside.

19. The petition stands disposed of.

JUDGE

Comparing Assistant