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

Case No. : Crl.Pet./1588/2026

SULEMAN ALI
S/O AHSAN ALI VIL. NAGABANDHA, P.S. LAHORIGHAT, DIST. MORIGAON, ASSAM -782105

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY THE LEARNED PP, GOVT OF ASSAM.

2:ABDUL KHALEQUE (INFORMANT)
S/O LATE LASUM UDDIN VILL NAGABANDHA P.S LAHARIGHAT
DISTRICT MORIGAON
ASSA

Advocate for the Petitioner : DARAK ULLAH, SABRISH AHMED,DEBAKSHI BORA

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MRS. JUSTICE SHAMIMA JAHAN

ORDER

18.11.2026

1. Heard Mr. D. Ullah, learned counsel appearing for the petitioner. Also heard Mr. K.K. Das, learned APP appearing for the State of Assam.

2. By this application filed under Sections 528, 438 and 442 of the BNSS, 2023

the petitioner has prayed for setting aside the order dated 02.11.2026 passed by the learned Special Judge (POCSO), Morigaon in POCSO Case No. 143/2024 whereby the petitioner's prayer for recalling the parents of the victim who were examined as PW-2 and PW-3 respectively, for further cross-examination was rejected.

3. The facts of the case, in brief, are that the petitioner is the accused in POCSO Case No. 143/2024 arising out of Lahorighat P.S. Case No. 166/2024 registered under Section 65(1) of the BNS read with Section 6 of the POCSO Act. The petitioner states that pursuant to the registration of the said police case, the police submitted a charge sheet against him under Sections 64(2) and 65(1) of the BNS read with Section 6 of the POCSO Act. Thereafter, charges were framed against the petitioner under Section 65(1) of the BNS read with Section 6 of the POCSO Act and the trial commenced.

4. It is the further case of the petitioner that during the course of the trial, the victim was examined along with the other witnesses. Thereafter, the petitioner filed an application before the learned Trial Court seeking permission for further cross-examination of the victim which was rejected. Challenging the said order of rejection, the petitioner approached this Court by filing an application, which was allowed by this Court vide order dated 24.09.2025 pursuant to which the victim was further cross-examined by the petitioner. It is the case of the petitioner that during the aforesaid further cross-examination, the victim had absolved the accused petitioner of the alleged offence. She had also stated that she had not made any statement before the learned Magistrate implicating the accused petitioner in her statement recorded under Section 183 of the BNSS, 2023.

5. The petitioner further states that pursuant thereto he filed an application

before the learned Trial Court seeking further cross-examination of the parents of the victim who were examined as PW-2 and PW-3 respectively. It is submitted that during their examination and cross-examination before the learned Trial Court, the said witnesses had deposed that the victim had informed them that the petitioner had committed the alleged offence. It was further stated that the mother of the victim had lodged the FIR after being informed that the alleged offence had been committed by the petitioner. The petitioner also submits that in the application filed before the learned Trial Court, the specific questions which he intended to put to PW-2 and PW-3 during their further cross-examination were duly set out. However, the learned Trial Court vide order dated 02.11.2026 rejected the said application.

6. The learned counsel appearing for the petitioner submits that while rejecting the application filed under Section 348 of the BNSS, the learned Trial Court observed that PW-2 and PW-3 had been examined and cross-examined on 09.12.2024 and 21.01.2025 respectively and that the application seeking their further cross-examination had been filed after a considerable lapse of time. The learned Trial Court further observed that allowing such an application would result in delay in the disposal of the case and on that ground rejected the prayer of the petitioner.

7. However, the learned counsel submits that further cross-examination of the parents of the victim is necessary for the just decision of the case as contemplated under Section 348 of the BNSS, particularly in view of the subsequent change in the victim's statement during her further cross-examination as noticed hereinabove. He further submits that the petitioner has no intention of delaying the disposal of the case and that the sole purpose of seeking further cross-examination is to bring the true facts on record before the

learned Trial Court.

8. On the other hand Mr. K.K. Das, learned APP submits that under Section 348 of the BNSS, 2023, the only requirement to be considered is whether the further examination of a witness is necessary for the just decision of the case. He submits that since the victim has already made her statement before the learned Trial Court, further cross-examination of her parents would not conclusively determine the issue involved in the trial. He further submits that the power to recall a witness for further examination is discretionary in nature and that the learned Trial Court has duly exercised such discretion while passing the impugned order.

9. I have heard the learned counsel for the parties and have perused the records. It is noticed that the victim was further cross-examined pursuant to the order passed by this Court on 24.09.2025. During her further cross-examination, the victim stated that she had absolved the accused petitioner of the alleged offence. She further stated that she had not made any statement before the learned Magistrate implicating the accused petitioner when her statement was recorded under Section 183 of the BNSS, 2023.

10. It is also noticed that PWs 2 and 3 who are the mother and father of the victim, respectively, stated in their examination-in-chief as well as during cross-examination that the victim had narrated to them the incident of her being raped by the petitioner. Consequently, an FIR was lodged with the police more particularly by the victim's mother.

11. Section 348 of the BNSS, 2023 provides that the Trial Court may exercise its discretionary power to summon any person as a witness or recall and re-

examine any person already examined, if it considers such action necessary. However, where the Court finds that the evidence of such person is essential for the just decision of the case it is mandated to summon recall and re-examine such person. The language employed in the said provision is significant inasmuch as the word "may" is used in the initial part of the provision whereas the word "shall" is used in the latter part thereof.

12. It is a settled position of law that the aforesaid power may be exercised by the Court at any stage of the inquiry, trial or other proceedings, as provided under the said provision. Such power is to be exercised only when the Court considers it necessary for arriving at a just decision in the case. The Hon'ble Apex Court has also held that in order to ascertain the true facts and circumstances of the case, the Court should undertake such an exercise whenever the same is found necessary.

13. In the instant case, there is a material variation in the version of the victim. Where such a variation is noticed and the Court does not find the victim's testimony to be sufficiently cogent and reliable to form the basis of a conviction, it becomes necessary to look for other evidence on record by way of corroboration. In the present case, the father and mother of the victim have supported the prosecution's case. Since their testimonies are now required to be considered for the purpose of corroboration, it is necessary that they be further examined so as to ascertain the true facts and circumstances of the case and arrive at a just decision.

14. Accordingly, the Trial Court is directed to permit the petitioner to further cross-examine PWs 2 and 3 by fixing a specific date for the said purpose however confining as far as possible such cross-examination to the questions

already indicated in Petition No. 1507/2026 dated 04.08.2026.

15. It is further directed that the petitioner shall bear the travelling expenses incurred by the said witnesses for appearing before the Court for the second time.

16. It is also made clear that in the event the petitioner fails to cross-examine the said witnesses on the date so fixed, the Trial Court shall consider granting any further date only upon being satisfied with the existence of valid and sufficient reasons for such failure.

17. However, if the Trial Court considers necessary for the just decision of the case, the petitioner shall also be permitted to put further questions to the said witnesses, even if such questions were not specifically indicated in the aforesaid application.

18. With the aforesaid observations and directions, the petition stands disposed of.

JUDGE

Comparing Assistant