

IN THE COURT OF SESSIONS JUDGE, SONITPUR AT TEZPUR

Criminal Revision NO. :- **6 (S-1)/2015**

Present :- **Mridul Kumar Kalita, AJS**
Sessions Judge, Sonitpur
Tezpur.

Petitioner :- **Sri Prafulla Kachowa,**
Son of Late Dulal Kachowa
R/O- Sonajuli Tea Estate,
Dholkuba Division
P.O. & Mauza:- Borjuli
P.S.-Rangapara, Sonitpur
Assam

-vs-

Opposite Party :- **Smt. Parvati Kachowa**
w/o Sri Prafulla Kachowa
R/O- Sonajuli Tea Estate,
Dholkuba Division
P.O. & Mauza:- Borjuli
P.S.-Rangapara, Sonitpur
Assam

Counsel for the Petitioner : Sri Dhiraj kumar Medhi, Advocate

Counsel for the Opposite Party : Sri Putul Borah, Advocate

Date of hearing : 08/05/2015

Date of Judgment : 20/05/2015.

JUDGMENT

1. Being aggrieved by the order, dated 05/01/2015, passed by Smt. Panchali Shyam, Sub-Divisional Judicial Magistrate(S), Sonitpur, in Misc. Case No. 136 of 2007, where by an adjournment cost of Rs 3000/- was imposed on the opposite party, Sri Prafulla Kachowa, who was the opposite party in Misc. Case No. 136 of 2007, has preferred the instant Criminal Revision, impugning the aforementioned order dated 05/01/2015.

2. Before entering into the merit of the instant revision Petition, let me briefly state the facts relevant for consideration of this Revision Petition.

(a) The Misc. Case No. 136 of 2007 has been filed by the respondent of this revision petition against the revision petitioner claiming maintenance under section 125 of the Code of Criminal Procedure. The said case was fixed in the Court of learned Sub-Divisional Judicial Magistrate(S), Sonitpur, on 05/01/2015, for adducing evidence of the opposite party's witnesses.

(b) On 05/01/2015, the Opposite Party (Revision Petitioner of the instant case) filed an adjournment petition before the Court, on the ground that he, being the secretary of Siloni Gaon Panchayat, has been asked to conduct and manage the Programme called "*Raijor padulit rajor sarkar*", in his Panchayat area, by the Government of Assam. He had submitted the notification issued by the Government of Assam to conduct the Programme called "*Raijor padulit rajor sarkar*" before learned Sub-Divisional Judicial Magistrate(S), Sonitpur. The cause was found to be genuine and the adjournment was allowed, by order dated 05/01/2015, by learned Sub-Divisional Judicial Magistrate(S), Sonitpur, however, she imposed a cost of Rs.3000/-as a condition precedent to an examination of the witnesses for opposite party.

This order dated 05/01/2015 is impugned in this instant Criminal Revision.

3. The Revision Petitioner, *inter-alia*, took following grounds for impugning the order dated 05/01/2015:-

(i) That learned Sub-Divisional Judicial Magistrate(S), Sonitpur has gravely erred in law as well as in fact while passing the impugned order, in as much as the cause shown by the Revision Petitioner, while seeking adjournment, was held that to be genuine, hence, such an exorbitant amount cannot be imposed as an cost on the Revision Petitioner and as such the same is liable to be set aside;

(ii) That learned Magistrate has erred in law as well as in fact by imposing such a heavy cost on the ground that in the wake of pending revision petition, in connection with the case for almost 4 years, the case could not be proceeded causing harassment to the petitioner in the maintenance case. It was stated that as the pending revision is a judicial process, the time consumed therein cannot be made a ground for imposing adjournment cost.

4. For the sake of convenience, the impugned order is quoted herein below:-

"05.01.2015 - Advocate of petitioner has filed hazira. OP is absent. Seen the petition no. 30/15 filed by the advocate of OP seeking adjournment on the ground that OP being a secretary of Saloni Gaon Panchayat is busy with an event organised by Govt. of Assam and therefore could not appear. Ld. Advocate for the OP submitted that though this Court, vide order dated 09-12-14, gave last chance to the OP to adduce evidence, considering this ground alone, the OP be given another chance to adduce evidence. Ld. Advocate of petitioner only submitted that today is the last chance for the OP to adduce evidence but neither the OP nor his witnesses appeared. Heard both sides. Perused the CR. As submitted the Ld. Counsel of both sides, today the OP was asked to adduce evidence from his side. But the OP failed to comply with the order of the Court and through his engaged Counsel prayed for adjournment. As per order dated 09/12/14, the OP does not deserve any further chance to adduce evidence. However, the ground mentioned in the petition appears to be genuine. Considering the fact that the case was pending in the Revisional Court for four years due to which proceedings could not be continued within this Court and also considering the fact that this has already caused untold harassment to the petitioner which is not in tandem with this beneficial legislation, the petition is allowed with cost of Rs3000/- to be paid to the petitioner as condition precedent to examination of DW. Fix 05/02/2015 for DW."

5. I have carefully examined the materials available on record. I have also heard Ld. Counsel for both the parties. Learned Counsel for the Revision Petitioner has submitted that once the Court has found the reason for seeking adjournment genuine, it cannot impose cost on the party seeking adjournment on some other extraneous considerations. He has also submitted that the Revision Proceeding pending in the Higher Court is a judicial proceeding and time consumed in such proceedings cannot be a ground for imposing cost by the lower Court. Learned

Counsel for the opposite party has submitted that the Court below has rightly imposed the cost as the maintenance proceeding u/s 125 Cr.P.C have been delayed by the Revision petitioner on one or other pretext.

6. On a mere cursory look at the impugned order would reveal that, on 05/01/2015, Ld. Magistrate had found the cause shown for seeking adjournment as genuine, however, she imposed adjournment cost of Rs.3000/-, apparently on the ground, that the case was pending in the Revisional Court for about four years which has caused on both harassment to the petitioner. In this regard, the submissions made by learned Counsel for the Revision Petitioner it appears to me as is plausible and cogent. I'm of the considered opinion that, once the learned Magistrate holds the ground for seeking adjournment to be genuine and actually grants adjournment on that ground, it can only impose cost to compensate the other party for the loss suffered by that party for allowing adjournment on that day, however, pendency of a revision proceeding in the Revisional Court, for whatsoever period, cannot be a ground for imposing cost by the trial Court. Expeditious disposal of a proceeding under section 125 Cr PC is most desirable and should be the endeavour of the Court before which such proceeding is pending, however, in the instant case, by making payment of cost as condition precedent to adducing of the evidence of opposite party's witness has only resulted in further delay of the proceeding. The impugned order, on the one hand finds the cause for adjournment genuine and actually allows it and on the other hand imposes heavy adjournment cost of Rupees three thousand and makes payment of costs as condition precedent for further proceeding, ex- facie, appears to be self-contradictory, illogical and unduly harsh.

7. In view of the above, the impugned order needs interference by this Revisional Court and accordingly the impugned order dated 05/01/2015, passed by Smt. Panchali Shyam, Sub-Divisional Judicial Magistrate(S), Sonitpur, in Misc. Case No. 136 of 2007, where by an adjournment cost of Rs 3000/- was imposed on the opposite party is hereby set aside. The Revision Petitioners shall appear before the Court of Sub-Divisional Judicial Magistrate(S), Sonitpur on 1st of June 2015 and the court shall fix a date for adducing evidence of opposite party's witness. The Revision Petitioner is directed to extend full cooperation for expeditious disposal of the

maintenance proceeding u/s 125 Cr.P.C pending in the Court of Ld. Sub-Divisional Judicial Magistrate(S), Sonitpur.

8. Send a copy of this Judgment to the learned Trial Court.
9. Given under my hand and seal of this court on this the 20th day of May, 2015.

(M. K. Kalita)
SESSIONS JUDGE
SONITPUR: TEZPUR

Dictated and corrected by me

(M. K. Kalita)
SESSIONS JUDGE,
SONITPUR :: TEZPUR

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