

GAHC010152672024

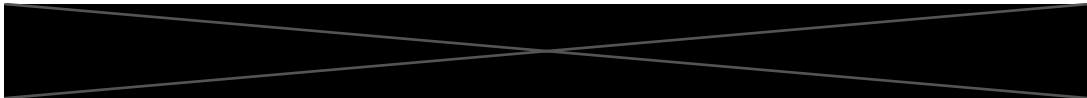


2025:GAU-AS:13692

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

Case No. : Crl.Rev.P./283/2024

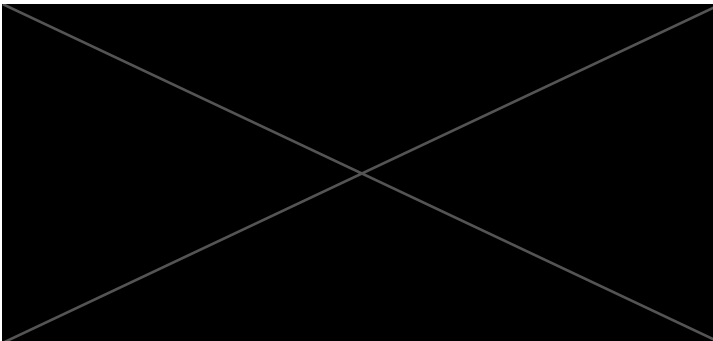
RAHUL GANDHI
S/O LATE RAJIV GANDHI



VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY THE PP, ASSAM

2:SRI ANJAN KUMAR BORA



Advocate for the Petitioner : MR. A M BORA, MR. D K BAIDYA, MR. D GAGAI

Advocate for the Respondent : PP, ASSAM, MR. D BORA(R-2), MR. P K DAS(R-2), MR. N MAHAJAN(R-2), MR. A CHAUDHURY (R-2), MR. B K MAHAJAN(R-2)

BEFORE
THE HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the Petitioner : Mr. A. M. Bora, Senior Advocate.
Mr. V. H. Choudhury, Advocate.

For the Respondents : Mr. K. Gogoi, Public Prosecutor.
Mr. B. K. Mahajan, Advocate.
Mr. N. Mahajan, Advocate.

Date of Hearing : 26.09.2025

Date of Judgment & Order : 13.10.2025

JUDGMENT & ORDER(CAV)

1. This matter is specially assigned to this Bench by Hon'ble the Chief Justice in terms of the direction of the Hon'ble Apex Court in ***Ashwini Kumar Upadhyay Vs. Union of India*** reported in ***2023 SCC Online SC 1463*** since the petitioner herein is a sitting Legislator (Member of Parliament)
2. Heard Mr. A. M. Bora, learned Senior Counsel, assisted by Mr. V. A. Choudhury, learned counsel for the petitioner. Also heard Mr. K. Gogoi, learned Public Prosecutor, Assam, representing the respondent No. 1 and Mr. B. K. Mahajan, learned counsel with Mr. N. Mahajan, learned counsel for the respondent No. 2.
3. The present application under Section 438/442 read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as BNSS), is filed challenging the impugned judgment and order dated 22.09.2023 passed by the learned Court of Additional Sessions Judge No. 2, Kamrup (M), at Guwahati in Criminal Revision No. 26/2023.
4. By the impugned order dated 22.09.2023, the learned Additional

Sessions Judge has overturned the order dated 18.03.2023 passed by the trial Court, by which an application filed by the complainant in C.R. Case No. 559/2016 with a prayer to adduce three additional witnesses was rejected.

5. The respondent No.2, as complainant, filed a complaint case before the Court of the learned Chief Judicial Magistrate, Kamrup (M) at Guwahati, inter alia, projecting that on 12.12.2015, the accused/petitioner went to Barpeta and took part in a Padayatra and addressed a public rally at a place called Medhirtari. It was further alleged that the accused petitioner was supposed to visit Barpeta Satra and take blessings in the Satra; however, he kept the officials of Satra waiting, and after waiting for a considerable period of time, the people waiting for him and the other office bearers of the Satra got annoyed and expressed their anguish before different TV channels and journalists present therein. It is also further projected in the complaint that, taking a cue from such a situation, the petitioner interviewed different TV channels and made a statement that he was prevented from going to the Satra by RSS people, which was subsequently published in The Times of India, New Delhi Edition, on 15.12.2015. According to the complaint, the same was also published in a local Assamese vernacular daily, namely, Dainik Agradoot, on 15 December 2015. It was alleged that the accused petitioner had deliberately and intentionally made defamatory statements to communalise the issue to gain political mileage on the eve of the forthcoming election in the State of Assam.
6. Based on such a complaint, C.R. Case No. 559/2016 was registered under Section 499/500 of the IPC. Before taking cognizance of the said

case, the learned trial Magistrate examined as many as six listed witnesses under Section 200/202 of the C.P.C. and thereafter took cognizance of the offences under Section 499/500 of the IPC.

7. Pursuant to that, summon was issued against the accused petitioner, who appeared before the learned trial Court and was released on PR Bond. After the explanation of the particulars of the offence, the matter proceeded to the stage of recording of evidence. As many as 7 (seven) prosecution witnesses, including the complainant himself, were examined, cross-examined and discharged. At that stage, an application was filed by the complainant to allow him to adduce 3 (three) more witnesses named in the aforesaid petition. The contents of the aforesaid petition shall be dealt with at a later stage of this judgment.
8. The accused filed objections to the petition above. After hearing the learned counsel for the parties, the learned Magistrate, under its order dated 18.03.2023, dismissed the aforesaid petition, primarily on the ground that the complainant has failed to specify the reason and purpose for calling the additional 3 (three) witnesses. The Magistrate also noted that if the complainant's claim is accepted, then these witnesses are acquainted with the facts of the case; however, a doubt remains as to the intention of the complaint, as these witnesses were not listed as witnesses. It was opined by the learned Magistrate that there may be many members of the RSS and police officials who are acquainted with the facts of the case, and if the complainant is allowed to bring such witnesses, it would result in an endless process.
9. Being aggrieved, the complainant approached the learned Sessions

Judge, Kamrup (M) at Guwahati by filing Criminal Revision Petition No. 26/2023. The petition above was allowed by the learned Additional Sessions Judge, by the impugned order dated 22.09.2023, thereby permitting the complainant to summon these three witnesses for examination.

10. The learned Additional Sessions Judge, allowed such application primarily applying the principle that is made applicable for recalling of witnesses under Section 244 Cr.P.C., as well as under Section 311 Cr.P.C., and found that the determination made by the learned Magistrate was based on presumption inasmuch as it was a determination of the learned Additional Sessions Judge that future anticipation that some other witnesses may be called for and it will be endless, is presumptive only.
11. Assailing the order of the learned Additional Sessions Judge, Mr. A. M. Bora, learned Senior Counsel for the petitioner argues that the complainant failed to cite any of the provisions of law under which such a petition was filed. According to him, the learned Additional Sessions Judge has committed a serious error of law by applying the principle of law applicable to Section 244 of Cr.P.C. inasmuch as the complaint in question was a summons procedure case and Section 254 of Cr.P.C. is appropriate, rather than the provision of Section 244 of Cr.P.C.
12. Mr. Bora, learned Senior Counsel submits that Section 254(1) of Cr.P.C., prescribes a mandate upon the Magistrate that the Magistrate must proceed to hear the prosecution and take all evidence as may be produced in support of the prosecution and thereafter, hear the accused and take all evidence as he produces in his defence. Additional witnesses may be

permitted under Section 254(2) of Cr.P.C., but when the Magistrate exercises its jurisdiction properly, the learned Additional Sessions Judge could not have allowed the Revision, applying the spirit of Section 244 of Cr.P.C., more particularly, when the application seeking examination of the witnesses lacks any reason.

13. According to Mr. Bora, learned Senior Counsel by virtue of the mandate of Section 254(1) of Cr.P.C., the complainant is to complete his case, which was also over in this case and therefore, calling of the witnesses subsequently, is nothing but with an object to harass the accused. Mr. Bora contends that even if it is assumed that the Court has the power to allow the complainant to call additional witnesses, to allow such an application, the Court or Magistrate must be satisfied that calling of such witnesses is necessary for the just determination of the case. According to him, in the present case, merely stating that these witnesses are material provides no explanation whatsoever. The complaint also didn't disclose any relevance of the proposed witnesses. Therefore, on the basis of such vague application and without a foundational fact being laid, the Magistrate has rightly dismissed such a petition since allowing such a kind of application shall mean abuse of the process of the Court and result in harassment of the accused, and the same shall also lead to filling up of the lacuna.
14. Mr. Bora, learned Senior Counsel further contends that neither in the complaint nor in the evidence so far recorded, the witnesses had made any whisper about these three proposed witnesses inasmuch as the Court to have a satisfaction that these witnesses are necessary, their relevance must be disclosed in the complaint petition and in absence of such disclosure, the

Magistrate has rightly dismissed such application; however, without there being any perversity, the learned Additional Sessions Judge, has interfered with such a decision.

15. According to him, even if it is assumed that the learned Additional Sessions Judge was correct in applying the principle of Section 244 of Cr.P.C. and Section 311 of Cr.P.C., the same will require a foundational fact that such witnesses are required to be called for just the decision of the case and to arrive at such a finding, the factual disclosure is a sine qua non.
16. Mr. Bora, learned Senior Counsel, argues that such a well-reasoned order passed by the learned Magistrate ought not to have been interfered with by the learned Additional Sessions Judge in exercise of its revisional power inasmuch as there is no illegality or perversity in the said case.
17. In support, Mr. Bora, learned Senior Counsel, places reliance on the decisions of the Hon'ble Apex Court in **Rajaram Prasad yadav –Vs- State of Bihar and Another** reported in **(2013) 14 SCC 461**, in **Md. Bilal Ahmed Barlaskar –Vs- State of Assam** reported in **2009 SCC Online Gau 141**, in **Sayeeda Farhana Shamim –Vs- State of Bihar and Another** reported in **(2008) 8 SCC 218**, in **Mohanlal Shamji Soni –Vs- Union of India and Another** reported in **1991 Supp (1) SCC 271** and in **Shobha Rani –Vs- State of Kerala and Others** reported in **2018 SCC Online Ker 23518**.
18. Mr. B. K. Mahajan, learned counsel for the respondent/complainant, submits that the context of an application filed under Section 254(2) of

Cr.P.C. is altogether different to that of an application filed either under Section 244 Cr.P.C. or under Section 311 of Cr.P.C. According to Mr. Mahajan, such a power is discretionary as such power is qualified by the phrase "**It deems fit**" and not for relatable to "**Just decision**" as required under Section 311 of Cr.P.C. According to Mr. Mahajan, the context provision under Section 254(2) of Cr.P.C., is altogether a different context, i.e. it is a right of a complainant to call witnesses as it may be exercised on application. According to Mr. Mahajan, learned counsel, the argument advanced by Mr. Bora, learned Senior Counsel that a foundational fact as required under Section 311 of Cr.P.C., is also required under an application filed by a complainant under Section 254(2) of Cr.P.C., is fallacious, when one is a right of the complainant and other one is for the Court to exercise, when such a necessity arises to arrive at a just decision.

19. In this context, referring to Section 204 of Cr.P.C., Mr. Mahajan, learned counsel for the respondent contends that even after the specific bar under Section 204(2) of Cr.P.C. that no summons or warrant shall be issued against any accused until a list of prosecution witness has been filed, the legislature in its wisdom has prescribed Section 254(2) of Cr.P.C., permitting the same Magistrate to allow the petitioner to file application to lead additional witness. According to Mr. Mahajan, learned counsel as the satisfaction for just decision is not required in an application under Section 254(2) of Cr.P.C., and the same is a right of the complainant, such right is a very valuable right for fair trial and therefore, filing of an application seeking presence of such witnesses will not amount to a harassment until and unless similar kinds of applications are filed consecutively.

20. Mr. Mahajan, learned counsel contends that the learned Additional Sessions Judge is right in holding that the Magistrate has presumed the future events. According to Mr. Mahajan, learned counsel, a Magistrate shall be within their rights to reject consecutive applications if there is no justified ground; however, the same cannot be dismissed on the presumption of future events. In support, Mr. Mahajan, learned counsel relies on the decision of the Hon'ble Apex Court in **Sunil Vassudev Pednekar –Vs- Bicholim Urban Co-operative Bank Ltd** reported in **2006 SCC Online Bom 1368**, in **Sayeed Farhana Shamim –Vs- State of Bihar and Another** reported in **(2008) 8 SCC 218**, in **S. Vivekanantham –Vs- R. Viswanathan and Others** reported in **1976 SCC Online Mad 1977**.
21. Before proceeding to deal with the arguments, this Court is of the opinion that in the given facts of the present case, the application filed by the petitioner though, was not filed under any specific provision of the code, however, the same in the given facts of the present case, is to be treated as an application under Section 254 (2) of Cr.P.C., as the complaint case is a summon procedure case.
22. It is the further opinion of this Court that the revision petition raises an important question touching upon the scope of the Magistrate's power under Section 254(2) of Cr.P.C. vis-a-vi the considerations required to be taken by a Magistrate when dealing with such an application, particularly, when additional witnesses are summoned under Section 254 (2) of Cr.P.C., after completion of prosecution's evidence envisaged under Section 254(1) of Cr.P.C.

23. Chapter XX of the Cr.P.C. lays down a simplified and speedy procedure for the trial of summons cases. Under Section 254(1) of Cr.P.C., the prosecution is obliged to lead all its evidence when the accused pleads not guilty. In the considered opinion of this Court, this embodies the principle that the complainant/prosecution must present its case fully and fairly at the outset.
24. In the opinion of this Court, Section 254(2) of Cr. P.C., is supplementary in nature. It confers a right upon the complainant to file an application to issue summons to additional witnesses or the production of documents. At the same time, it confers a discretionary power upon the Magistrate to issue summons on such an application.
25. To summarise, Section 254(1) of Cr.P.C. is mandatory and sequential i.e. it is the ordinary stage at which prosecution adduces its evidence; Section 254(2) of Cr.P.C. is supplementary and enabling, i.e. it permits deviation from the ordinary rule in the interest of justice even after the stage of Section 254(1) of Cr.P.C. is completed. This Court is also of the opinion that such witnesses are, in addition to the listed prosecution witnesses that have been filed in terms of Section 204(2) of Cr.P.C.
26. Therefore, once the stage of Section 254(1) of Cr.P.C. is concluded, the Magistrate shall not be powerless to summon such witnesses or documents. In the opinion of this Court, the legislature has advisedly conferred continuing discretion on the Magistrate, recognising that in the course of a trial, the necessity for additional evidence may arise.
27. Having said so, this Court is now to consider whether the principle and parameters required to be followed by a Court while exercising its power

under Section 311 of Cr.P.C., can also be equally made applicable while exercising power under Section 254(2) of Cr.P.C.

28. Section 254(2) of Cr.P.C. operates specially in the trial of summons cases. It is invoked after the prosecution's evidence is closed and before or during the defence's evidence. In the opinion of this Court, its purpose is to allow the complainant, upon application, to present additional witnesses or documents in support of their case. Importantly, the Legislature uses the permissive phrase "**if he thinks fit**" into Section 254(2) of Cr.P.C.
29. Section 311 of Cr.P.C. is a residuary provision applicable in all trials (warrant or summons). It can be used at any stage to summon or recall witnesses. Crucially, if the Court considers any witness's evidence "**essential to the just decision of the case**", the Court is obliged to summon or recall that witness.
30. In a long line of decisions, the Hon'ble Apex Court have repeatedly emphasised that the mandatory limb of Section 311 of Cr.P.C. ensures that a party is not deprived of relevant evidence. However, in the opinion of this Court, Section 254(2) of Cr.P.C. lacks the "**essentiality**" language; therefore, the statutory scheme is distinguishable.
31. It is the further opinion of this Court that if the criteria of "**essential to just decision**" are imported into Section 254(2) of Cr.P.C., the discretionary power under Section 254(2) of Cr.P.C. would be unduly constricted.
32. A reading of the language of Section 254(2) of Cr.P.C., this Court is of the opinion that the legislature had consciously separated "**if he thinks fit**" in

Section 254(2) of Cr.P.C., from the stronger requirement of “**essential to the just decision of the case**” under Section 311 of Cr.P.C.

33. The Magistrate under Section 254(2) of Cr.P.C., in the opinion of this Court, have wide discretionary power to summon witnesses, subject to avoidance of abuse.
34. Taken together, both provisions work independently. While exercising power under Section 254(2) of Cr.P.C., Magistrates need to consider whether admitting the additional witness would further justice and fairness. They are not required to perform the same high threshold test that triggers an obligation under Section 311 of Cr.P.C.
35. Having said so, this Court cannot be unmindful of the proposition that such judicial discretion under Section 254(2) of Cr.P.C., or any discretion exercised by a Court, is not unfettered, though it may be wide. Such discretion must be exercised judicially, not arbitrarily. Therefore, the guiding principle for the exercise of such judicial discretion should be the touchstone of justice and a fair trial; preventing abuse, and finally, a reasoned order.
36. Yet another vital facet, in the considered opinion of this Court, is that by way of insertion of Section 254(2) of Cr.P.C., the legislature has permitted a deviation of the mandate of Section 204(2) of Cr.P.C., when the magistrate, on an application, deems it fit to allow. Therefore, in the opinion of this Court, the party who seeks such a deviation must lay some foundation so that the Magistrate exercising jurisdiction can decide that “it is a fit case” to exercise such jurisdiction and that such prayer is reasonably, fairly,

proportionate to advance justice.

37. Now, coming into the case in hand, the grounds cited in the application filed by the complainant before the learned Magistrate, being important, are quoted herein below:-

“4. That the evidence of the above named witnesses is very much essential to arrive at a just decision in the instant case as trial is a voyage where the ultimate quest is to find the truth.

5. That, the complainant begs to state that this Hon'ble Court would be kind enough and allow the complainant to examine the above named witnesses as PWs on his behalf and they are material witnesses considering the nature of offence alleged in the instant case”.

38. In the considered opinion of this Court, the aforesaid grounds are very general and formulative reasons. The grounds quoted hereinabove are unexplained and too vague in light of what has been determined hereinabove.

39. It is true that section 254(2) of the Code of Criminal Procedure vests in the magistrate a discretionary power to summon witnesses or documents when the magistrate deems it fit. This provision is intended to serve the ends of Justice and not to confirm an unregulated liberty to introduce new evidence at all. The discretion, therefore, is to be exercised upon satisfaction that the proposed evidence is necessary for a fair and just trial and that in its absence it would occasion a failure of Justice. In the case at hand, a careful scrutiny of the petition filed before the magistrate reveals

that the complainant has not specified anything, let alone the specific nature of the evidence proposed, nor has he demonstrated in what manner such evidence bears any nexus with the facts in issue, except stating that these witnesses are material and vital. The grounds as quoted herein above, are too broad and general. The disclosure of the minimal particulars, which would enable the magistrate to assess whether he deems it fit to allow such a prayer, is/are also not present. It is also not the case of the petitioner that the names of these witnesses were inadvertently omitted from the original list. Therefore, the basic facts that are required to enable a magistrate to exercise his discretion are absent. To exercise its discretionary jurisdiction based on a general and bald statement would amount to encouraging procedural laxity. It would be contrary to the settled principle that the discretion under section 254(2) must be exercised judiciously.

40. From the reasons recorded herein above, in the considered opinion of the court, in the present case, the application filed before the Magistrate was wholly vague and bereft of particulars. Therefore, the magistrate had rightly declined the prayer.
41. The Revisional court, however, without advertening to the absence of any substantive ground or recording any finding of the necessity of such witness, has mechanically interfered with the reasoned order of the Magistrate. The Revisional power is limited to correcting jurisdictional or procedural error, and it does not empower the Session court to substitute its own discretion for that of the Magistrate in the absence of any manifest illegality. The learned Additional Sessions Judge did not consider that the

foundation was not laid in the petition seeking the summoning of the witnesses, even to arrive at the satisfaction required. The learned judge ignored the settled proposition of law as discussed and recorded herein above, while allowing the Revision petition by reversing the order of the Magistrate. Such is an arbitrary exercise of discretion, resulting in patent illegality, which cannot be allowed to stand.

42. Accordingly, the impugned order dated 22.09.2023 passed by the learned Additional Sessions Judge No. 2, Kamrup (M), Guwahati in Criminal Revision No. 26/2023 stands set aside and quashed.
43. It is made clear that as the petitioner is a sitting Member of Parliament, the learned Magistrate shall take measures to expeditiously dispose of the case, in terms of the direction issued by the Hon'ble Apex Court in **Ashwini Kumar Upadhyay vs. Union of India** (supra).

JUDGE

Comparing Assistant