GAHC010200602023

2026:GAU-AS:13179

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

Case No. : Crl.Rev.P./400/2023

CAMBRIDGE EDUCATION TRUST
HAVING ITS REGISTERED OFFICE AT MAJ- JALUKBARI, NEAR K.K. HANDIQUE SANSKRIT COLLEGE, P.O. GUWAHATI UNIVERSITY, P.S. JALUKBARI, PIN-781014 REP. BY ITS SECRETARY- MR. HEMANTA DAS,
AGED ABOUT 59 YEARS,
S/O HARKANTA DAS

VERSUS

HARI DAS
S/O LATE NAREN CHANDRA DAS,
R/O PODUMBURI, P.O. GOTANAGAR
P.S. JALUKBARI, GUWAHATI, PIN-781011, KAMRUP (M), ASSAM

Advocate for the Petitioner : MR. S KALITA, GUNJAN DAS,MR P DAS

Advocate for the Respondent : MR. M RANA, MR. M K SHARMA,MD. M HOQUE

Linked Case : Crl.Rev.P./401/2023

CAMBRIDGE EDUCATIONAL TRUST
HAVING ITS REGISTERED OFFICE AT MAJ- JALUKBARI
NEAR K.K. HANDIQUE SANSKRIT COLLEGE
P.O. GUWAHATI UNIVERSITY
P.S. JALUKBARI
PIN-781014 REP. BY ITS SECRETARY- MR. HEMANTA DAS
AGED ABOUT 59 YEARS
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VERSUS

KARTIK CHANDRA DAS
S/O LATE NAREN CHANDRA DAS
R/O PODUMBURI
P.O. GOTANAGAR
P.S. JALUKBARI
GUWAHATI
PIN-781011
KAMRUP (M)
ASSAM

Advocate for : MR. S KALITA
Advocate for : MR. M RANA appearing for KARTIK CHANDRA DAS

Linked Case : Crl.Rev.P./402/2023

CAMBRIDGE EDUCATION TRUST
HAVING ITS REGISTERED OFFICE AT MAJ- JALUKBARI
NEAR K.K. HANDIQUE SANSKRIT COLLEGE
P.O. GUWAHATI UNIVERSITY
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KARTIK CHANDRA DAS
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P.S. JALUKBARI
GUWAHATI
PIN-781011
KAMRUP (M)
ASSAM

Advocate for : MR. S KALITA
Advocate for : MR. M RANA appearing for KARTIK CHANDRA DAS

BEFORE
HON'BLE MRS. JUSTICE MITALI THAKURIA

Advocate for the Petitioners : Mr. P. Das.
Advocate for the Respondents : Mr. M. K. Sharma

Date on which judgment is reserved : **19-05-2026**

Date of pronouncement of judgment : **10-09-2026**

Whether the Pronouncement is of the operative part of the judgment? : N/A

Whether the full judgment has been pronounced? : Yes

JUDGMENT & ORDER (CAV)

Heard Mr. P. Das, learned counsel for the petitioners and Mr. M. K. Sarma, learned counsel for the respondents.

2. As all these criminal revision petitions, arises out of the same cause of action, hence, all are taken together for final disposal.

3. These three criminal revision petitions has been preferred under Section 397 read with Section 401 CrPC for setting aside the impugned order dated 26.06.2023, passed in C.R. Case No. 202^{C}/2017 in Crl. Rev. P. No. 400/2023; order dated 26.06.2023, passed in C.R. Case No. 152^{C}/2017 in Crl. Rev. P. No.

401/2023 and order dated 26.06.2023, passed in C.R. Case No. 201^{C}/2017 in Crl. Rev. P. No. 402/2023 by the learned CJM, Kamrup (R) whereby, the Petition No.819; Petition No.820 and Petition No.821 filed under Section 311 CrPC for summoning and calling the witness as Court/material witness was rejected by the learned CJM, Kamrup (R).

4. It is submitted by Mr. Das, learned counsel that in the said case, it was projected by the respondent that he along with his two brothers sold a plot of land vide Registered Sale Deed No. 1570 dated 09.02.2016 in respect of land measuring 4 Bigha, 3 Kathas covered by Dag No.147 (old) and 353 (new) of K.P. Patta No. 30 (old) 183 (new) under Revenue Village - Maj Jalukbari, Mouza - Jalukbari. The total consideration of the land was Rs.1,15,00,000/- and out the consideration amount, a part payment of Rs.35,00,000/- was paid to the respondent by the petitioner and the remaining balance consideration amount of Rs.80,00,000/- was paid by the petitioner by issuing some post dated cheques on 09.02.2016 on the day of execution of the Sale Deed, some other cheques were also issued by the petitioner. But it is the case of the respondent/complainant that he deposited the cheques for drawal in the UCO Bank, Amingaon, West Guwahati. But the said cheques were dishonoured and it was returned vide return memo dated 19.08.2017 with the reasoning "the payment stopped by the drawer".

5. It is further alleged that when the respondent had informed about the dishonour of the cheques, the petitioner did not give any response to the request of the complainant/respondent for making arrangement for the said cheques for which the respondent sent a statutory notice, demanding payment of cheque amount within 15 days from the date of receipt of the notice, which was sent through registered post and was served on the petitioner on

15.09.2017.

6. It is the further case of the respondent that even after receipt of the notice, the petitioner did not gave his reply within the statutory period and for which, the respondent had to institute a proceeding under Section 138 of the N.I. Act against the revision petitioner.

7. On the other hand, it is the case of the petitioner that he has already paid the amount much higher that the sale consideration of Rs.1,15,00,000/- to three brothers, but despite this, they have not given the complete possession of the land, which the petitioner had purchased. The case was thereafter in the stage of evidence and the petitioner and his brother also adduced their evidences in the said N.I. Act case. During the cross examination it was elicited that out of total sale consideration amount of Rs.1,15,00,000/-, he and his brother had received a total amount of Rs.1,14,00,000/-.

8. It is further the case of the petitioner that out of the total consideration of Rs.1,15,00,000/-, he had already paid the entire amount and apart from that, their one of the brother namely, Anil Das also received more than Rs.50,00,000/- from the petitioner, but his evidence was intentionally withheld to suppress the fact. In such a compelling situation, the petitioner preferred a petition under Section 311 CrPC with a prayer to summon their third brother, namely one Anil Das as Court witness for eliciting the truth and also to prove that the petitioner has already paid in excess of the actual sale consideration of Rs.1,15,00,000/-. The one of the brother i.e., Anil Das had received quite a big amount of money towards sale consideration and thus, he was also one of the vital witness for the case of the present petitioner.

9. But the said prayer of the petitioner was objected by the respondent and

on hearing the both sides, the learned Trial Court had rejected the petition filed under Section 311 CrPC to call their third brother as a witness. It was the view of the Court that the transaction was purportedly took place between the revision petitioner and the respondent and not with one Mr. Anil Das. Further it was contended that even if it is presumed that said Anil Das took some amount of money from the petitioner that would not ipso facto lead to a conclusion that said money was taken by said Anil Das on behalf of the respondent and as a result the alleged liability of the petitioner towards the respondent does not get negated.

10. The learned Trial Court also took the view that during the course of examination under Section 313 CrPC, the petitioner never claimed that he had paid the sale consideration to the respondent through Mr. Anil Das. It was also observed by the learned Trial Court that it is absolutely silent as to how, the said payment of sale consideration was made to said Anil Das to have a bearing upon the question of legally enforceable debt, which is allegedly owed by the petitioner to the present respondent and with those observation, the prayer for calling said Anil Das as a Court witness was rejected by the learned Trial Court.

11. On being dissatisfied with the order passed by the learned Trial Court dated 26.06.2023 rejecting the prayer for calling one of the brother of the respondent as a witness under Section 311 CrPC, the accused as petitioner has filed the present revision petitions.

12. It is submitted by Mr. Das, learned counsel that the petitioner had paid excess amount of sale consideration and the remaining amount of Rs.80,00,000/- were paid in cheques and out of which, the brother of the respondent said Anil Das had received Rs.50,00,000/- which is quite a big amount towards sale consideration. But his evidence was never recorded by the

complainant intentionally, which is very essential for the petitioner to prove his case as a big amount of money has already been paid to the said brother of the respondent and hence for proper adjudication of the case his evidence is necessary.

13. But the learned Trial Court did not consider this aspect of the case and the petition was rejected only on hyper technical ground. It is also observed by the learned Trial Court that the petition was filed only to fill up the lacuna and also with the above referred observation, the petition was rejected.

14. He further submitted that his evidence is very essential to prove the payment of the outstanding dues, which is received by the said brother of the respondent namely, Anil Das and hence, his evidence is very essential to prove the case of the defence specially to the extent that he has already paid more than the sale consideration amount and one part of the sale consideration is also received by said Anil Das, who is also one of the owner of the land, he being the brother of the respondent.

15. The learned counsel for the respondent, Mr. Sarma, raised objection and submitted that the order passed by the learned Trial Court dated 26.06.2023 rejecting the prayer under Section 311 CrPC is purely an interlocutory order and hence, it is not maintainable under Section 397 CrPC.

16. He further submitted that the Hon'ble Apex Court has already observed that prayer for rejection of a petition under Section 311 CrPC cannot even considered as an intermediate order and it is purely an interlocutory order and thus, the petition is not at all maintainable in the present form.

17. He further submitted that at the time of recording the statement of the petitioner under Section 311 CrPC he declined to adduce any evidence, but

subsequently only with a view to delay the proceeding and to harass the respondents, he filed petition under Section 311 CrPC and the learned Trial Court considering all the aspect of the case had passed a detailed order rejecting the prayer for adducing evidence by the petitioner under Section 311 CrPC and hence, there cannot be any reason to make any interference in the order passed by the learned Trial Court which is also purely an interlocutory order.

18. Mr. Sarma further submitted that there is a Full Bench decision of the Apex Court that it cannot be converted to 482 CrPC and the order of rejection on the prayer of 311 CrPC cannot even considered as an intermediate order to entertain the revision petition.

19. So basically, Mr. Sarma, learned counsel for the respondents stressed on the point that the revision is not at all maintainable for an interlocutory order and the order passed by the learned Trial Court rejecting the prayer made under Section 311 CrPC is purely an interlocutory order and there cannot be any conversion of the revision petition to a petition under Section 482 CrPC.

20. In that context, Mr. Sarma, relied on the following decisions:

(i) **Sethuraman Vs. Rajamanickam** reported in **(2009) 5 SCC 153;**

(ii) **Mahima Management Services Pvt. Ltd & Ors Vs. Creative Property Developers Pvt. Ltd & Anr.** reported in **2024 0 Supreme (Cal) 518** and

(iii) **Girish Kumar Suneja Vs. Central Bureau of Investigation** reported in **(2017) 14 SCC 809**

21. In the above referred judgments, the Apex Court had expressed the view that an application under Section 311 CrPC is interlocutory order and as such, the revision against this order is clearly barred under Section 397 (2) CrPC. In para 5 of the said judgment **Sethuraman (supra)** it has been held as under:

> "*5. Secondly, what was not realized was that the order passed by the Trial Court refusing to call the documents and rejecting the application under Section 311 Cr.P.C., were interlocutory orders and as such, the revision against those orders was clearly barred under Section 397(2) Cr.P.C. The Trial Court, in its common order, had clearly mentioned that the cheque was admittedly signed by the respondent/accused and the only defence that was raised, was that his signed cheques were lost and that the appellant/complainant had falsely used one such cheque. The Trial Court also recorded a finding that the documents were not necessary. This order did not, in any manner, decide anything finally. Therefore, both the orders, i.e., one on the application under Section 91 Cr.P.C. for production of documents and other on the application under Section 311 Cr.P.C. for recalling the witness, were the orders of interlocutory nature, in which case, under Section 397(2), revision was clearly not maintainable. Under such circumstances, the learned Judge could not have interfered in his revisional jurisdiction. The impugned judgment is clearly incorrect in law and would have to be set aside. It is accordingly set aside. The appeals are allowed."*

22. In the case of **Giris Kumar (supra)** also the three Judges Bench of the Apex Court had held that any final order or intermediate order only can be considered under the revision petition, i.e., the order which is set aside would result in culmination of the proceeding. Para 27 and 29 of the said judgment read as under:

> "*27. Our conclusion on this subject is that while the appellants might have an entitlement (not a right) to file a revision petition in the High Court but that entitlement can be taken away and in any event, the High Court is under no obligation to entertain a revision petition – such a petition can be rejected at the threshold. If the High Court is inclined to accept the revision petition it can do so only against a final order or an intermediate order, namely, an order which if set aside would result in the culmination of the proceedings. As we see it, there appear to be only two such eventualities of a revisable order and in any case only one such eventuality is before us. Consequently the result of paragraph 10 of the order passed by this Court is that the entitlement of the appellants to file a revision petition in the High Court is taken away and thereby*

the High Court is deprived of exercising its extraordinary discretionary power available under Section 397 of the Cr.P.C.

29. This leads us to another facet of the submission made by learned counsel that even the avenue of proceeding under Section 482 of the Cr.P.C. is barred as far as the appellants are concerned. As held in Amar Nath and with which conclusion we agree, if an interlocutory order is not revisable due to the prohibition contained in Section 397(2) of the Cr.P.C that cannot be circumvented by resort to Section 482 of the Cr.P.C. There can hardly be any serious dispute on this proposition."

23. The Hon'ble Calcutta High Court also as referred above had held in para 20 of the above referred judgment that the order for rejection of an application under Section 311 CrPC is purely an interlocutory order and thus, the provision under Section 397(2) CrPC is not maintainable against an interlocutory order.

24. Mr. Sarma, learned counsel accordingly submitted that in the present case also the petitioner had approached before this Court with a revision petition against the order of rejection of the prayer made under Section 311 CrPC, which is purely an interlocutory order and hence, the present petition is not at all maintainable in the present form.

25. Mr. Sarma, learned counsel further submitted that the learned Trial Court had passed a detailed order while rejecting the prayer made under Section 311 CrPC and from the application as well as from the order itself, it is very much clear that the said petition was filed only with a view to fill up the lacuna as well as to delay the proceeding.

26. Mr. Sarma, learned counsel accordingly raised vehement objection and submitted that the present revision petitions are liable to be dismissed on the said ground.

27. Mr. Das, learned counsel for the petitioner raised objection to the submission made by the learned counsel for the respondents, specially in

regards to the interlocutory order and it is submitted that even the revision petition can be converted to a petition under Section 482 CrPC and nomenclature is immaterial if the setting aside of the order of the learned Trial Court is essential for just determination of this case and also for doing substantial justice and there cannot be any bar for converting a revision petition to a criminal petition under Section 482 CrPC and such hyper technical view should not be accepted when the setting aside of order is very much essential for just and proper decision of the case.

28. Mr. Das, learned counsel also relied on the same decision to substantiate his submission. He cited one decision of the Apex Court in the case of **Akanksha Arora Vs. Tanay Maben** reported in **2024 Legal Eagle (SC) 1108,** passed by a Division Bench of the Apex Court wherein it is clearly held that the nomenclature of a petition is immaterial and for doing the substantive justice, the High Court can always convert a petition under Section 482 CrPC to a revision petition under Section 397 CrPC and vice versa. The petition should not be rejected on hyper technical ground. It further held that the availability of alternative remedy of criminal revision petition under Section 397 CrPC by itself cannot be the ground to dismiss an application under Section 482 CrPC. Para 7 of the said judgment read as under:

> "*7. This Court has, in a catena of decisions, provided that nomenclature of a petition is immaterial and for doing substantive justice, the High Court can always convert a petition under Section 482 CrPC to a revision under Section 397 CrPC and vice versa. The approach of the High Court in dismissing the petition filed by the appellant under Section 482 CrPC on the hyper technical ground that she had to avail the remedy of revision cannot be appreciated because the same has unnecessarily compelled the appellant to approach this Court by way of this appeal filed under Article 136 of the Constitution of India.*"

29. Mr. Das, learned counsel further submitted that the Apex Court in the case of **Mohanlal Shyamji Soni Vs. Union of India** reported in **1991 Legal**

Eagle (SC) 119 had expressed the view that power of the Court to summon any person under Section 311 CrPC can be exercised at any stage of the proceeding provided such examination of person is essential for the decision of the case and it is also held that it is a cardinal rule in law of evidence that best available evidence should be brought before the Court and he emphasized on para 10 of the said judgment, which read as under:

> "*10. It is a cardinal rule in the law of evidence that the best available evidence should be brought before the Court to prove a fact or the points in issue. But it is left either for the prosecution or for the defence to establish its respective case by adducing the best available evidence and the Court is not empowered under the provisions of the Code to compel either the prosecution or the defence to examine any particular witness or witnesses on their sides. Nonetheless if either of the parties with-holds any evidence which could be produced and which, if produced, be unfavourable to the party withholding such evidence, the court can draw a presumption under illustration (g) to Section 114 of the Evidence Act. In such a situation a question that arises for consideration is whether the presiding officer of a Court should simply sit as a mere umpire at a contest between two parties and declare at the end of the combat who has won and who has lost or is there not any legal duty of his own, independent of the parties, to take an active role in the proceedings in finding the truth and administering justice? It is a well accepted and settled principle that a Court must discharge its statutory functions-whether discretionary or obligatory-according to law in dispensing justice because it is the duty of a Court not only to do justice but also to ensure that justice is being done. In order to enable the Court to find out the truth and render a just decision, the salutary provisions of Section 540 of the Code (Section 311 of the New Code) are enacted whereunder any Court by exercising its discretionary authority at any stage of enquiry, trial or other proceeding can summon any person as a witness or examine any person in attendance though not summoned as a witness or recall or re-examine any person in attendance though not summoned as a witness or recall and re-examine any person already examined who are expected to be able to throw light upon the matter in dispute; because if judgments happen to be rendered on inchoate,, inconclusive and speculative presentation of facts, the ends of justice would be defeated."*

30. Heard the submission made by the learned counsel for the parties and I have also perused the case record and the impugned order dated 26.06.2023, passed by the learned CJM, Morigaon while dismissing the prayer for adducing a

DW under the provision of Section 311 CrPC.

31. It is the case of the petitioner that he purchased the land from the respondent as well as his two brothers vide registered sale deed No. 1570 dated 19.02.2016 for land measuring 4 Bigha 3 Katha and the total consideration was of Rs.1,15,00,000/-, out of which part payment of Rs. 35,00,000/- was paid to the respondent by the petitioner and there was a remaining balance consideration of Rs.80,00,000/- and it is the allegation brought by the petitioner that the petitioner though issued some post dated cheques on 09.02.2016, i.e., on the day of execution of the sale deed, one cheque which was deposited in the UCO Bank for drawal was returned with a remark 'stop payment by drawer', on the basis of which the complaint case/case under the NI has been instituted by the respondents.

32. On the other hand it is the case of the petitioner is that after execution of the sale deed, he paid more than the sale consideration amount to the respondents and a considerable amount was received by one of the brother namely, Anil Das after the execution of the sale deed. But he was never brought as a witness before this Court who had received the considerable amount of money from the petitioner on the basis of which the petition under Section 311 CrPC was filed by the petitioner for adducing evidence of said brother of the complainant as DW to bring the fact that he has already paid more than the considerable amount of money and out of which said brother of the complainant had received a considerable amount of Rs.50,00,000/- from him. But the learned Trial Court had rejected the prayer made by the petitioner under Section 311 CrPC with the observation that the said petition is absolutely silent as to how purported payment of any sale consideration by the accused to one Mr. Anil Das would in any manner have a bearing upon the question of legally

enforceable debt i.e., allegedly owed by the accused to the complainant and it also observed that after recording of the statement of the accused/petitioner under Section 313 CrPC he initially wanted to adduce evidence, but subsequently he filed another application stating that he would not adduce any defence evidence and as a result the case was fixed for argument. Thus, only to delay the proceeding, the petitioner filed the instant petitions praying for adducing the evidence of one DW under Section 311 CrPC. But on perusal of the case record it reveals that admittedly the land belong to three brother and out of which said Anil Das is one of the brother/executants of the sale deed whereby the land of the complainant/respondent was sold to the present petitioner/accused wherein the total sale consideration was fixed at Rs.1,15,00,000/-. It is an admitted position that the sale deed was executed and some part payment was also made to that effect by the petitioner, but the allegation brought against him that he did not make the remaining part of the payment and one cheque amounting to Rs.10,00,000/- was also returned with a note 'Stop Payment by Drawer'. But the main contention of the present petitioner is that said Anil Das being one of the executants of the sale deed as well as owner of the land had received a considerable amount i.e., Rs.50,00,000/- from the petitioner towards the sale consideration and thus, it cannot be held as observed by the learned Trial Court that the petition was silent that the payment of sale consideration by the accused to Mr. Anil Das had no bearing upon the question of legally enforceable debt, rather, it is seen that the main contention of petition is that the said Anil Das had received an amount of Rs.50,00,000/- towards the sale consideration. However, the other facts will come out if said Anil Das is examined by the petitioner as well as by the complainant side but out rightly it cannot said that the accused has no legally

enforceable debt towards said Anil Das, who was one of the executants of the deed as well as the owner of the land.

33. Coming to the question of interlocutory order, it is seen that the learned counsel for the petitioner had relied on a decision of the Supreme Court, wherein it has been held that any order for rejecting the prayer made under Section 311 CrPC is purely an interlocutory order and hence, it is not maintainable under Section 397 CrPC.

34. But here in the instant case, it is seen that the petitioner may be prejudiced, if he is not given any chance of adducing evidence of said Anil Das who is admittedly related with the said transaction of money being one of the executants of the sale deed. Further, it is the case of the petitioner that he had already made payment more than the consideration of amount wherein a big amount of money is received by said Anil Das towards the sale consideration. Thus, though apparently it seems to be an interlocutory order, whereby the prayer for 311 CrPC was rejected by the Court, but it seems that the rejection of the said order will affect the final judgment of the case, wherein, the claim was made by the petitioner that he already paid a considerable amount of money to said Anil Das who is one of the executants-cum-owner of the land. Thus, it is the opinion of the Court that though the order was passed in context with 311 CrPC, but it can be considered as an intermediate order, which would affect the final result of the case and if the petitioner did not get a chance to agitate his defence appropriately, prejudice would be caused to the petitioner. More so, as observed by the Hon'ble Supreme Court in the case of **Akanksha Arora (supra)** as relied by the petitioner, that nomenclature of a petition is immaterial and for doing substantive justice and Court is to do the substantial justice and alternative remedy in a petition cannot by itself be a ground for dismissal of a

petition. Further, it has also held that the Court should not reject any petition only on hyper-technical ground.

35. Here in the instant case also it is seen that the nature of the petition and all the circumstances under which the petition was dismissed by the learned Trial Court can be held an intermediate order as for the reasons stated above.

36. More so, it is settled law that 311 CrPC can be exercised at any stage of the proceeding provided such examination of a person is essential for the just decision of the case. As relied by the learned counsel for the petitioner in the case of **Mohanlal Shyamji Soni (supra)** it has been expressed the view that it is the cardinal rule of law of evidence that the best available evidence should be brought before the Court for the just decision of the Court and to bring out the truth before the Court.

37. In the instant case also it is seen that the petitioner/accused had prayed for adducing evidence of one of the brother of the complainant/respondent as Court witness/DW, as he claimed that he had paid a considerable amount of Rs.50,00,000/- to the said brother of the complainant towards sale consideration.

38. It is settled position of law that petition under Section 311 CrPC can be entertained/allowed at any stage of the proceeding, if it is required for the just decision of the case and to bring out the actual truth before the Court. At the same time, as discussed above, though apparently, it is found to be an interlocutory order, but the result of the said interlocutory order will affect the decision of the case and thus, it may be considered as an intermediate order wherein, revision can be entertained under Section 397 CrPC.

39. So, considering all these aspects of the case and in view of the detailed

discussion made above, this Court is of the opinion that a chance may be given to the present petitioner/accused to adduce the evidence of said Anil Das and hence, the order passed by the learned Trial Court rejecting the petition filed under Section 311 CrPC is liable to be set aside and quashed.

40. In view of above, the impugned order dated 26.06.2023, passed in C.R. Case No. 202^{C}/2017 in Crl. Rev. P. No. 400/2023; order dated 26.06.2023, passed in C.R. Case No. 152^{C}/2017 in Crl. Rev. P. No. 401/2023 and order dated 26.06.2023, passed in C.R. Case No. 201^{C}/2017 in Crl. Rev. P. No. 402/2023, rejecting the Petition No.819; Petition No.820 and Petition No.821 filed under Section 311 CrPC by the learned CJM, Kamrup (R) for summoning and calling the witness as Court/material witness is hereby set aside and quashed.

41. Accordingly, these criminal revision petitions are hereby allowed and disposed of.

JUDGE

Comparing Assistant

Rupam Das

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