

GAHC010012752013



2026:GAU-AS:5134

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

**Case No. : Crl.Pet./844/2013**

DIBENDU JYOTI KAR  
S/O DILIP KUMAR KAR R/O VILL- DALU, UNDER BARKHOLA P.S. IN THE  
DIST. OF CACHAR, ASSAM.

VERSUS

THE STATE OF ASSAM and ANR

2:SMTI SMTI CHANDRANI SARKAR  
W/O BIJOY SARKAR PERMANENT ADDRESS - UZAN BAZAR  
C/O SHIVRAM BORA PARK  
GHY. DIST. KAMRUP  
ASSA

**Advocate for the Petitioner** : MR.D GOGOI, MR.A M BORA,MS.C CHOUDHURY,MR.S R  
BORUAH

**Advocate for the Respondent** : , MR.B DEKA,MRS BORGOHAIN,PP, ASSAM

**:: PRESENT ::**

**HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA**

For the Petitioner	:	Mr. A.M. Bora, Senior Advocate. Mr. D.K. Baidya, Advocate.
For the Respondent No.1 :		Mr. D.P. Goswami, Addl. P.P., Assam.
For the Respondent No.2:		Mr. B. Deka, Advocate.
Date of Hearing	:	24.03.2026.
Date of Judgment	:	07.04.2026.

**JUDGMENT AND ORDER (CAV)**

Heard Mr. A.M. Bora, learned senior counsel assisted by Mr. D.K. Baidya, learned counsel appearing for the petitioner. Also heard Mr. D.P. Goswami, learned Addl. Public Prosecutor, Assam representing Respondent No.1 as well as Mr. B. Deka, learned counsel representing Respondent No.2.

**2.** This is an application under Section 482 of the CrPC challenging the order dated 07.11.2013 passed by the learned Addl. District & Sessions Judge (FTC), Cachar, Silchar in Sessions Case No.08/2013.

**3.** While filing the *charge sheet* against the present petitioner, one person called Dulal Paul was shown as a prosecution witness. In spite of that, Dulal Paul was not examined by the prosecution. Therefore, he was examined as a defence witness by the present petitioner. Subsequently, he became hostile and hence, the petitioner filed an application before the trial court under Section 154 of the Indian Evidence Act, 1872 praying for permission to cross-examine his own witness.

4. After hearing both sides, the trial court refused the prayer of the petitioner. While passing that order, the trial court had held that when a witness whose statement was recorded by the police is called as defence witness, he cannot be corroborated by the former statement nor can he be contradicted by the police by that statement.
5. Aggrieved by the aforesaid order, the petitioner has come to this Court by filing the present petition.
6. Mr. Bora has relied upon a decision of the Hon'ble Supreme Court that was delivered in *Tehsildar Singh and Anr. v. State of U.P.*, reported in *1995 SCC OnLine SC 17*. Mr. Bora has relied upon this decision to contradict the submission of Mr. Deka who claimed that under Section 162 of the CrPC, the accused cannot cross-examine his own witness.
7. Referring to Section 145 of the Indian Evidence Act in *Tehsildar Singh (supra)*, the Supreme Court has held that Section 145 has two parts, the first part enables the accused to cross-examine a witness as to the previous statement made by him in writing or reduced to writing, without such writing being shown to him and the second part deals with a situation where the cross-examination assumes the shape of contradiction; in other words both part deal with cross-examination. The Court further held that the first part deal with cross-examination other than by way of contradiction and the second part deals with cross-examination by way of contradiction only.
8. In *Tehsildar Singh (supra)*, the Supreme Court has held that the proviso to Section 162 of the Code of Criminal Procedure only enables the accused to make use of such statement to contradict a witness in the manner provided in by Section 145 of the Indian Evidence Act.
9. Mr. Bora has also submitted that Section 155 (3) of the Indian Evidence Act goes in his favour. Section 155 reads as under:

“155. Impeaching credit of witness.—The credit of a witness may be impeached in the following ways by the adverse party, or, with the consent of the Court, by the party

who calls him.

(1) By the evidence of persons who testify that they, from their knowledge of the witness, believe him to be unworthy of credit;

(2) By proof that the witness has been bribed, or has 1 [accepted] the offer of a bribe, or has received any other corrupt inducement to give his evidence;

(3) By proof of former statements inconsistent with any part of his evidence which is liable to be contradicted;

Explanation. — A witness declaring another witness to be unworthy of credit may not, upon his examination-in-chief, give reasons for his belief, but he may be asked his reasons in cross-examination, and the answers which he gives cannot be contradicted, though, if they are false, he may afterwards be charged with giving false evidence.”

**10.** According to Mr. Bora, the petitioner is empowered to cross-examine his own witness under the provisions of Section 155(3) of the Indian Evidence Act.

**11.** I have considered the submissions made by the learned counsel of both sides.

**12.** This Court is of the opinion that the learned trial court has erroneously oriented itself while refusing the prayer of the petitioner.

**13.** At this stage, a brief visit to Section 145 of the Indian Evidence Act would be fruitful. It reads as under:

“145. Cross-examination as to previous statements in writing. — A witness may be crossexamined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.”

**14.** The defence witness Dulal Paul became hostile and therefore, his credit may be impeached by proof of former statements inconsistent with any part of evidence which is liable to be contradicted.

**15.** Under Section 145 of the Indian Evidence Act, the accused can cross-examine a witness as to previous statement made by him in writing or reduced to writing without such writing being shown to him. The proviso to Section 162 of the Code of Criminal Procedure enables the accused to make use of statements already recorded in order to contradict a witness in the manner provided by Section 145 of the Indian Evidence Act.

**16.** For the aforesaid reasons, the prayer of the petitioner is allowed. The impugned order dated 07.11.2013 passed by the learned Addl. District & Sessions Judge (FTC), Silchar, Cachar in Sessions Case No.08/2013 is set aside. The petitioner is entitled to cross-examine his own witness Dulal Paul, even as to his previous statement reduced into writing.

**17.** With the aforesaid direction, the Criminal Petition is disposed of.

Interim order passed earlier stands vacated.

**JUDGE**

**Comparing Assistant**