

HIGH COURT OF TRIPURA
A_G_A_R_T_A_L_A
Crl. Rev P. No.01 of 2022

1. Shri Milan Paul, son of late Suresh Chandra Paul, resident of Belonia town, P.O. & P.S. Belonia, District: South Tripura.

.....Accused-petitioner

-VERSUS-

1. Smti. Rikta Paul (Sarkar), wife of late Sankar Sarkar, a resident of Jail Road, P.O. & P.S. Belonia, District: South Tripura.
2. The State of Tripura represented by the Public Prosecutor, State of Tripura.

..... Respondent-Opposite parties

B_E_F_O_R_E
HON'BLE THE CHIEF JUSTICE (ACTING)

For Petitioner(s)	:	Mr. S. K. Deb, Sr. Advocate. Mr. S. Datta, Advocate.
For Respondent(s)	:	Mr. S. Debnath, Addl. P.P. Mr. S. Das, Advocate.
Date of hearing & delivery of judgment and order	:	04.04.2023
Whether fit for reporting	:	YES

JUDGMENT & ORDER [ORAL]

Heard S. K. Deb, learned senior counsel assisted by Mr. S. Datta, learned counsel appearing for the petitioner. Also heard Mr. S. Debnath, learned Addl. P.P. and Mr. S. Das, learned counsel appearing for the respondents.

[2] The present petition has been filed under Section-397 read with Section-482 of the Code of Criminal Procedure for revising the order in exercise of power of superintendence of this Court in respect of the order passed by the learned Sessions Judge, South Tripura, Belonia in Criminal Revision Petition No.08 of 2019 passed on 27.09.2021 wherein, the learned Sessions Judge while rejected the revision. Further, for reviewing the order in

exercise of power of superintendence of this Court in respect of the order passed on 13.12.2021 in N.I. No.16 of 2016 wherein, the learned Judge rejected the prayer of adjournment fixing the case on 12.01.2022 for judgment.

[3] The succinct fact of the case is that the learned Sessions Judge, South Tripura, Belonia has rejected the prayer of the petitioner that the petitioner was submitted her DW as per Section-345 of Cr. P.C. and the learned Court have her only one opportunity to examine herself only as DW. She has not been given scope for exhibiting the photocopy of the agreement. The learned trial Court also rejected the prayer dated 13.12.2021 of the petitioner and fixed the matter for judgment on 12.01.2022. Thus, the present petition has been filed.

[4] The learned Court below after hearing the parties and perusal of the material evidence on record has observed as under:

“This Court is of the opinion that as the revision-petitioner has filed his examination-in-chief by way of affidavit and he has also prayed for giving evidence as DW as per section-315 of Cr. P.C. so learned trial court is directed to give only one opportunity to the petitioner namely, Milan Paul to examine himself as DW, but he cannot be given scope to call the witnesses as per his prayer and he cannot also be given scope for exhibit the photocopy of the agreement. However, if the petitioner comes with the original copy of the agreement, at that time, the photocopy after comparing with the original can be exhibited.

The revision petition is thus rejected.

Return the LR record with a copy of this order.”

[5] Being aggrieved by and dissatisfied with the judgment passed by the learned Courts below, the present petition has been preferred by the petitioner before this Court.

[6] Mr. S. K. Deb, learned senior counsel assisted by Mr. S. Datta, learned counsel appearing for the petitioner has submitted that the learned Sessions Judge has failed to appreciate the fact by not granting opportunity to adduce evidence and also acted illegally and irrationally in rejecting the revision petition denying the opportunity of adducing evidence. The learned

trial Court by an order passed on 08.10.2021 ordered for issuance of the notice upon the accused petitioner but that was not served upon the accused petitioner. The learned counsel for the petitioner was not apprised about the remand back of the matter and fixing the date of hearing. As such, the impugned order needs to be quashed.

[7] On 13.12.2021 an application for adjournment was filed on behalf of the accused petitioner delineating the facts even though, by order dated 08.10.2021, the learned trial Judge directed for issuance of the notice upon the accused petitioner. No copy whatsoever was issued upon the accused petitioner. The petitioner came to learn about the fixing of date for hearing of the case on 13.12.2021 and as such, prayed for granting adjournment.

[8] After hearing the argument of the learned counsel appearing for the parties and having observed the observation made by the learned Courts below, this Court is of the view that the present petition has been filed assailing the order passed by the learned Sessions Judge in confirming the order passed by the Court below. The petitioner is the respondent before the Court below and at this stage for examining the evidence, the petitioner has filed this petition for summoning the witnesses in his favour and accordingly the present petition has been filed. For the purpose of reference the prayer of the petitioner may be reproduced herein below:

“That in this case all the witnesses are VIP in nature and some witnesses declined to appear before the Court and hence for ends of justice all the witnesses may kindly be summoned to appear before this Court otherwise the accused shall not be able to produce them.....”

[9] To this, the learned Court below has rejected the same and observed that *“I find that document is out of agreement and it is only Xerox copy certified by notary and in the said agreement I did not find the name of Hon’ble Justice and District and Sessions Judge who were cited as witnesses by the Ld. counsel of the accused person in his petition and the Xerox copy of any agreement will not be accepted in evidence. Considering the above facts and circumstances petition filed by the Ld. counsel of the accused dated*

19.07.2019 is hereby rejected and the chapter of D.Ws is hereby closed. Fix 02.08.2019 for argument.”

[10] Aggrieved thereby, an application has been filed before the learned Sessions Judge, South Tripura Belonia, wherein, the Court has dismissed the petition confirming the order passed by the learned Court below by observing thus:

“This Court is of the opinion that as the revision-petitioner has filed his examination-in-chief by way of affidavit and he has also prayed for giving evidence as DW as per section-315 of Cr. P.C. so learned trial court is directed to give only one opportunity to the petitioner namely, Milan Paul to examine himself as DW, but he cannot be given scope to call the witnesses as per his prayer and he cannot also be given scope for exhibit the photocopy of the agreement. However, if the petitioner comes with the original copy of the agreement, at that time, the photocopy after comparing with the original can be exhibited.”

[11] Since, the request of the petitioner was not considered; the present petition has been filed before this Court for appropriate adjudication. Learned senior counsel Mr. S. K. Deb, has submitted that opportunity was not given to the petitioner to adduce evidence and it is violative of its rights under SectionS-243/247 of Cr.P.C.

[12] Mr. S. Das, learned counsel appearing for the respondents has submitted that the order passed by the Courts below in rejecting the request of the petitioner is correct and it needs no interference and the same needs to be upheld and prayed to dismiss the present petition.

[13] It is relevant to note that the affidavit filed in respect of the petitioner summoning the witnesses, there is no valid reason indicating as to why the witnesses on behalf of the defendant needs to be examined and in absence of any such pleadings, it becomes necessary for the Court to analyze as to why such witnesses needs to be examined. The documents which were placed on record before the Court below are Xerox copies and as such, the Court has declined to consider the same. The petitioner has not taken any plea as per Section-65 of the Indian Evidence Act for authentication of the documents as placed on record.

[14] The evidence under Sections-243/247 Cr.P.C. no doubt is framed for protection of the interest of the accused person before Section-313 Cr. P.C. and even thereafter in the interest of rendering justice. But here is a case affidavit filed seeking examining of the witnesses do not indicate any reasons and in the absence of such reasons, the case of the petitioner cannot be appreciated and also no such relief can be granted. Accordingly, this Court finds that the orders passed by both the Courts below need no interference and thus, the present petition stands dismissed.

[15] For the purpose of reference, Section-243 of Cr. P.C. may be reproduced hereinbelow:

“243. Evidence for defence: (1) the accused shall then be called upon to enter upon his defence and produce his evidence; and if the accused puts in any written statement, the Magistrate shall file it with the record.

(2) If the accused, after he has entered upon his defence, applied to the Magistrate to issue any process for compelling the attendance of any witnesses for the purpose of examination or cross-examination, or the production of any document or other thing, the Magistrate shall issue such process unless he considers that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice and such ground shall be recorded by him in writing.

Provided that, when the accused person has cross-examined or had the opportunity of cross-examining any witness before entering on his defence, the attendance of such witness shall not be compelled under this section, unless the Magistrate is satisfied that it is necessary for the ends of justice.

[16] Mr. S. K. Deb, learned senior counsel has placed his reliance upon a judgment of this Court and the Court was of the strong view that the accused person needs to be given reasonable opportunity to adduce evidence in his favour to prove that he is not guilty. The relevant portion of the judgment may be extracted hereinbelow:

“25. The reasons assigned by the trial Court as well as by the learned Sessions Judge for refusing the prayer of the accused for issuing summons to his witnesses are not acceptable in view of the law laid down by the Apex Court in the cases Kalyani Baskar (supra) and T. Nagappa (supra). The petitioner is an accused under Section 138 N.I Act punishment of which may extend to imprisonment for a term up to two years or with fine which may extend to twice the amount of cheque or with both. Therefore,

he should be allowed fair and proper opportunity to prove his innocence. Adducing evidence in support of his defence is a valuable right of him which cannot be denied to him. If for non submission of the true particulars of the witnesses, the trial Court felt it difficult to issue summons to the defence witnesses, trial Court could have asked the accused to submit proper particulars of the witnesses. One of the reasons assigned by the trial Court is that in a complaint case it is the duty of the accused to produce the defence witnesses on his own and court cannot issue summons to the defence witnesses. By the impugned judgment, the learned Sessions Judge appears to have accepted the reasoning assigned by the trial Court and upheld his order by allowing the criminal revision petition.”

[17] Since, the petitioner herein has not made out any case by way of his pleadings in the affidavit or even before the Court below, this Court is not in a position to rescue the accused petitioner. Consequently, the judgment as placed by the learned senior counsel has no relevance in the present facts and circumstances of the case.

[18] In view of above and after gone through the material evidence on record and after hearing the arguments advanced by the learned counsel appearing for the parties, this Court comes to a conclusion that the petitioner herein has failed to make out his case in his favour and thus, the same stands dismissed. Consequently, the orders passed by the Courts below stands confirmed. As a sequel, miscellaneous applications pending, if any, shall stand closed.

CHIEF JUSTICE (ACTING)

A.Ghash



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