

**HIGH COURT OF TRIPURA
AGARTALA
Crl.Rev.P.No.09 of 2023**

Sri Tapas Nama

.....Petitioner(s)

Versus

The State of Tripura

.....Respondent(s)

For Petitioner(s)	:	Mr. A. Bhowmik, Adv.
For Respondent(s)	:	Mr. R. Datta, P.P.
		Mr. S. Debnath, Addl. P.P.

HON'BLE THE CHIEF JUSTICE (ACTING)

Order

06.02.2023

Heard Mr. A. Bhowmik, learned counsel appearing for the petitioner as well as Mr. R. Datta, learned P.P. appearing for the respondent.

2. By means of this petition, the petitioner has approached this High Court under Section 397 read with Section 401 of the Cr.P.C. challenging the order dated 12.01.2023 passed in Case No.Spl(POCSO)24 of 2021 by the Special Judge, Belonia, South Tripura, whereby the Special Judge below dismissed the petition filed by the petitioner under Section 311 of the Cr.P.C.

3. The case of the petitioner is that an FIR dated 13.07.2019 was registered against the petitioner under Belonia Women Police Station whereby it was alleged that the petitioner kidnapped one minor girl aged about 14 years. Accordingly, an FIR was registered against the petitioner under Section 366 of the IPC. Upon completion of the investigation, the police submitted a charge-sheet against the petitioner under Section 366/376(2) of the IPC under Section 6

of the POCSO Act and Section 9 of Protection of Child Marriage Act. The said case is under trial at present under the Special Judge, South Tripura, Belonia, Vide Case No.Spl(POCSO)24 of 2021. The charge was framed on 01.12.2021 and thereafter the prosecution witnesses were examined and cross examined w.e.f.11.01.2022 to 04.01.2023. A date was fixed on 11.01.2023 for examination of the accused under Section 313 of the Cr.P.C.

4. On 11.01.2022, an application was filed on behalf of the petitioner to recall the PW-1 and PW-2 to cross examine the said witnesses on some specific questions under Section 311 of the Cr.P.C. which reads as under :

- “(i) Whether the Witness No.1 and 2 depose before the Ld. Court under the influence of Police ?**
- (ii) Whether the Witness No.2 Kumari Bristi Nama leave the House Voluntarily or not ?**
- (iii) Whether the Witness No.2 leave with the accused at Dharmanagar or not?**
- (iv) Whether the accused have any part in the offence ?”**

5. The Special Judge below rejected the said petition vide order dated 12.01.2023 with a finding that both PW-1 and PW-2 were examined on 11.01.2022 and both of them were cross examined by the defence thoroughly. Thereafter, both the witnesses were discharged. The prayer of the petitioner is that due to oversight, the earlier engaged counsel did not ask the relevant questions and in opinion of the Court, the earlier counsel did his best as per his knowledge and experience. Accordingly, the Special Judge below has rejected the petition filed by the petitioner under Section 311 of the Cr.P.C.

6. Mr. A. Bhowmik, learned counsel appearing for the petitioner has submitted that the trial court has been vested with the power to summon any

material witness at any stage of trial or recall and re-examine any person already examined under Section 311 of the Cr.P.C.

7. Mr. Bhowmik, learned counsel has further submitted that the court below has come to a finding that the petition filed by the petitioner under Section 311 of the Cr.P.C. cannot be allowed as the earlier conducting counsel did his best as per his knowledge and experience. According to Mr. Bhowmik, learned counsel, the said ground of rejection is not tenable in the eye of law as the Special Judge below have not adjudicated the competence of a counsel but the Court below has adjudicated the case of a litigant which has been put on criminal trial. Therefore, the consideration of the court below ought to have been whether in the interest of justice and considering that the defence has a right of free and fair trial, the specific questions as mentioned above under Section 311 of the Cr.P.C. is required to be put to PW-1 and PW-2 and for that purpose, whether the said two witnesses are required to be recalled or not.

8. Having heard the counsel for the parties this court is of the considered opinion that the arguments as advanced by the learned counsel appearing for the petitioner is just and proper.

In terms of the above, this petition stands allowed and disposed of.

Pending application/s, if any, also stands disposed of.

CHIEF JUSTICE (ACTING)