

**HIGH COURT OF TRIPURA
AGARTALA
Crl.Petn.No.61 of 2022**

For Petitioner(s) : Mr. B. Chaudhuri, Adv.
For Respondent(s) : Mr. R. Datta, P.P.

HON'BLE THE CHIEF JUSTICE (ACTING)

Order

17.01.2023

Heard Mr. B. Chaudhuri, learned counsel appearing for the petitioner as well as Mr. R. Datta, learned P.P. appearing for the respondents.

2. The respondent No.2 as complainant had filed the case under Section 500 and 501 of the IPC against the petitioner accused herein vide C.R. Case No.75 of 2019 and that on 01.04.2021 the respondent complainant as PW-1 was examined and the court below had fixed the next date for argument finally.

3. The conducting lawyer now deceased had expired on 11.09.2022 in Bombay Tata Memorial Hospital and this fact is not known to the petitioner accused. The said conducting lawyer used to retain the case file with him during life time. Knowing the said demise, the petitioner accused then collected the case file from his chamber on 19.11.2022. After collection of the said file, it was found that no certified copies of the impugned orders dated 07.02.2022 and 24.08.2022 passed by the Trial Court as well as the Sessions Judge was available. The accused petitioner without delay applied for the impugned orders and judgments and was made available on 22.12.2022 and on 01.12.2022

which aforementioned causes prevented the accused petitioner to file the instant application under Section 482 of the Cr.P.C.

4. The accused petitioner applied for certified true copy of deposition of PW-1 in trial court and on perusal, it was found that inadvertently, cross-examination was not done upon some exhibits. Most particularly, Exhibit-1/3 to 1/8 which are most vital to arrive to a just decision of this case was not done due to carelessness and ignorance on the part of the accused petitioner. The accused petitioner had made an application under Section 311 of the Cr.P.C. for recalling but on 07.02.2022, the trial Court had rejected the application on the sole ground that the Section 311 of the Cr.P.C. cannot be used as a tool to fill up the gap or deficiencies left during cross examination while the accused petitioner was given proper opportunity to cross examine the complainant.

5. Thereafter, the accused petitioner had moved to the Sessions Judge under Section 397 of the Cr.P.C. read with Section 399 of the Cr.P.C. against the impugned order passed by the trial Court on 07.02.2022 and for calling and re-examining the PW-1 and for the purpose of satisfying the learned Court as to the correctness, legality or propriety of the impugned order so passed and to set aside the same. The learned Sessions Judge vide Criminal Revision petition No.8 of 2022 had further 24.08.2022 rejected the Revision petition of the petitioner on the ground the relevant context in quoted :

".....the present case is at the stage of argument and recalling the respondent at this stage for further cross-examination will prejudice the case of the respondent."

6. The accused petitioner had published the contents of affidavit of the respondents in public interest, public good and for welfare of society at large and hence, no offence was committed under Section 500 of the IPC. Admittedly, the complainant had also raised a protest letter to the accused petitioner for publication of this news items in the newspaper and those letter was published.

7. The learned Trial Court on 07.02.2022 had rejected the application of the accused petitioner very mechanically and wrongly without considering the decision reported in **AIR 1991 SC 1346** that was referred to on behalf of the accused petitioner and by considering a decision of the apex Court most illegally which was not at all referred to by the accused petitioner and by that, the learned Sessions Judge on 24.08.2022 passed an impugned order rejecting the revision application which is a replica one of the learned Trial Court judgment dated 07.02.2022 and also did not consider the principle enunciated in the said decision as referred above and hence, being aggrieved it was found that inadvertently, cross examination was not done.

8. The prosecution side withholding the nature of property and thus kept the accused petitioner in dark and that the relevant testimony of the PW-1 examination-in-chief is quoted as follows :

"....I accordingly complied with all guidelines related to the submission of nomination form along with an affidavit wherein I disclosed entire property and I had submitted certified true copy of the same before this court...."

9. It is pertinent to mention here that the source of the property particularly exhibit 1/3 to 1/8 was most vital in order to appreciate the

prosecution case as well as defense case for just decision of the case while the affidavit did not disclose the source of the said property.

10. The respondent complainant also did not disclose in his complaint petition the source of the said huge immovable property nor in his deposition and that there is no cross-examination by the accused petitioner due to inadvertence, carelessness and ignorance. The accused petitioner had published the contents of affidavit of the respondent complainant in public interest, public good and for welfare of the society at large and hence, no offence is committed under Section 500 of the IPC.

11. The trial Court below on 07.02.2022 had rejected the application under Section 311 of the Cr.P.C. of the accused petitioner very whimsically. The learned Sessions Judge, West Tripura, Agartala on 24.08.2022 has dismissed the petition. Being aggrieved and dissatisfied with the passed by the court below the accused petitioner has preferred this petition.

12. Having heard the counsel for the parties and on perusal of the lower court orders this court is of the considered opinion the present Criminal petition needs to be dismissed affirming the order of the lower court.

In the result, this petition stands dismissed.

JUDGE