

**HIGH COURT OF TRIPURA
AGARTALA**

Crl.Petn. No.62/2022

Sri Krishan Das

..... Petitioner(s)

V E R S U S

The State of Tripura

.....Respondent(s)

For Petitioner(s) : Mr. Samar Das, Advocate.

For Respondent(s) : Mr. Ratan Datta, P.P.

HON'BLE THE CHIEF JUSTICE (ACTING)

Order

03/01/2023

Heard Mr. Samar Das, learned counsel appearing for the petitioner. Also heard Mr. Ratan Datta, learned Public Prosecutor appearing for the respondent-State.

2. By means of this petition, the petitioner has challenged the Order dated 01.12.2022 passed by the learned Special Judge (POCSO), West Tripura Judicial District, Agartala in case No. Special (POCSO) 30 of 2018 whereby the learned Judge has rejected the petition filed by the petitioner under section 311 of Cr.P.C. for recalling the witnesses for their re-cross examination.

3. Petitioner has prayed for the following reliefs:

- "(i) Admit this revision petition.
- (ii) issue notice upon the respondents.
- (iii) call for records and
- (iv) after hearing the parties set aside/quash the order dated 01-12-2022 passed in Special (POCSO) by Ld. Special Judge (POCSO), West Tripura, Agartala and allow the application of the accused petitioner under section 311 of Cr.P.C. and also allow the accused petitioner to further cross examination of the Prosecution witnesses viz. PW-2 (Complainant-Smt. Lipika Deb), PW-4 (Smt. Alo Saha), PW-5 (Sreemati Das), PW-10 (Dr. Pranab Choudhury), PW-15 (Scientific Officer-Smt. Rupali Majumder), PW-16 (Sri Pranab Deb), PW-18 (I/O of this case) and pass such other order or orders as the Hon'ble court may deem fit and proper the ends of justice."

4. Case of the petitioner, in a nutshell, is that on 05.04.2018 the complainant Smt. Lipika Deb lodged an F.I.R. before the East Agartala Police Station alleging, inter alia, that on the same day her daughter namely Riya Deb as usual went to the house of the accused petitioner for tuition. While the complainant went to take her back, she found the accused and the victim in a nude condition. Thereafter, with the help of the villagers the complainant lodged this F.I.R. against the accused whereafter the investigating authority conducted investigation and having found *prima*

facie case against the accused submitted charge-sheet against him. Then charge was framed against the accused petitioner under Section 376(2)(i) of IPC read with Section 6 of the POCSO Act. After completion of trial while the case was fixed for examination of accused under Section 313 Cr.P.C., counsel of the accused filed one application under Section 311 of Cr.P.C. for recalling some of the witnesses for their further cross-examination by defence counsel. Learned Trial Judge after hearing the parties vide order dated 01.12.2022 rejected the said 311 application. Aggrieved thereby, the accused petitioner filed this petition. Hence, this case.

5. Mr. Samar Das, learned counsel appearing for the petitioner, submits that due to inadvertence, learned defence counsel during cross-examination did not put some vital questions to some of the witnesses which are relevant for just adjudication of the said case. Learned counsel also submits that if these witnesses are not allowed to be re-cross examined, the accused will be seriously prejudiced resulting in gross miscarriage of justice. Counsel further submits that the learned Special Judge failed to appreciate such facts and circumstances and committed an error while rejecting the prayer made under section 311 of Cr.P.C. Accordingly, he prays for setting aside the impugned order dated 01.12.2022 passed by the learned Special Judge.

6. On the other hand, Mr. Ratan Datta, learned Public Prosecutor appearing for the respondent-State, vehemently objected the submissions advanced by the learned counsel for the petitioner contending that since the evidence of the vital witnesses were closed after thorough examination, there is no need for their re-cross examination and only to fill up the lacunae the accused petitioner has made the prayer u/s 311 Cr.P.C. and as such, learned trial Judge rightly rejected the prayer made under section 311 of Cr.P.C. Accordingly, he contends that there is no error in the impugned order passed by the learned trial Judge and prays for dismissal of the petition.

7. Having considered the submissions of learned counsel for both the parties, this Court is of the considered view that the accused petitioner has taken a delaying tactics which would protract the proceedings. The petitioner is having a remedy under 313 Cr.P.C. to explain in his defence. More so, the accused petitioner has not stated anything with regard to the specific issues on which the witnesses are to be re-examined under Section 311 of Cr.P.C. and the learned trial Judge has rightly rejected the prayer of the accused made u/s 311 Cr.P.C. and passed the impugned order which calls for no interference. Accordingly, the instant petition stands dismissed. Consequently, the impugned order dated 01.12.2022 passed by the learned

Special Judge (POCSO), West Tripura Judicial District, Agartala in case No. Special (POCSO) 30 of 2018 is hereby confirmed.

8. Pending application(s), if any, also stands disposed of.

CHIEF JUSTICE (ACTING)

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HIGH COURT OF TRIPURA



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