

Serial No.01
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl.Petn. No. 97 of 2023

Date of Order: 12.09.2023

Shri. Miningstar Marwein & Anr. Vs.

State of Meghalaya.

Coram:

Hon'ble Mr. Justice B. Bhattacharjee, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. M. Lyngdoh, Adv.

For the Respondent(s) : Mr. R. Gurung, GA with
Ms. S. Shyam, GA.

Heard both the learned Counsels appearing for the respective parties.

Aggrieved primarily by the order dated 09-08-2023 passed by the Trial Judge, special POCSO Court, Nongpoh, Ri-Bhoi District, rejecting the prayer of the accused under Section 311 Cr.P.C for recall of witness No. PW-8, who is the Medical & Health Officer, Civil Hospital, Nongpoh, Ri-Bhoi District for his cross-examination. The petitioner approached this Court by way of this application under Section 482 Cr.P.C. seeking quashing of order dated 09-08-2023 and also the order dated 26-07-2022.

The case of the petitioner is that the PW-8 who happens to be the Medical & Health Officer, Civil Hospital, Nongpoh, Ri-Bhoi District was examined as prosecution witness on 26-07-2022 and on the same day, the

cross-examination of the witness was closed as the defense Counsel was not present in the Court. Since PW-8 happens to be a vital witness in the matter, the newly engaged Defense Counsel on behalf of the accused filed an application under Section 311 Cr.P.C on 28-07-2022 for recalling of PW-8 (Dr. Shri. Robertson Sawian) for cross-examination. The learned Trial Judge rejected the same application mainly on the ground that Criminal Court cannot seek review or revision of its earlier order passed by the same Court.

The reasons cited by the learned Trial Judge in rejecting the application under Section 311 Cr.P.C filed by the accused seems to be totally untenable in law in view of the fact that the provision of Section 311 Cr.P.C. is independent of Section 362 Cr.P.C. and the bar imposed therein does not operate when an application under Section 311 Cr.P.C. is required to be entertained by a Trial Court.

Mr. R. Gurung, learned Government Advocate for the State-respondent, fairly concedes that the order impugned is not passed in accordance with the law. He submits that he would not have any objection if the order impugned is set aside and a direction is passed directing the Trial Court to allow the Cross-examination of PW-8 (Dr. Shri. Robertson Sawian).

In view of the above, the order dated 09-08-2023 passed by the Special Judge, POCSO, Ri-Bhoi District in Criminal Miscellaneous Application No.86 of 2023 arising out of Special POCSO Case No. 11 of 2018 is hereby set aside and quashed.

The application of the petitioner under Section 311 Cr.P.C. seeking recalling of PW-8 (Dr. Shri. Robertson Sawian) for the purpose of cross-

examination stands allowed. The matter is remanded to the Trial Court with a direction to fix a date for recalling of PW-8 (Dr. Shri. Robertson Sawian) for the purpose of cross-examination by the petitioner.

Insofar as challenge to the order dated 26-07-2022 is concerned, the same is found to be inconsequential at this stage and no order is passed in that regard.

The application stands allowed in terms of the aforesaid order.

Judge

Meghalaya
12.09.2023
“Biswarup PS”

