

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

CRIL. PETN. No. 53 of 2024

Ningthoujam Tomchou Singh, aged about 64 years,
S/o Late N. Chandramai Singh of Thangmeiband
Meisnam Leikai, P.O. Lamphel, P.S. – Imphal, District
Imphal West, Manipur.

... Petitioner

- Versus -

1. Superintendent of Police, CBI, SCB, Kolkata –
CGO Complex, Ground & 2nd Floor, "A" Wing DF
Block, Salt Lake, Kolkata – 700064 And Others.
2. Nongmaithem Jinnty, aged about 28 years, D/o,
N. Kheroda of Yaiskul Moirangkhom Sougaijam
Leirak, Imphal West, Manipur.
3. Kamei Ileen, aged about 56 years, D/o Late
Kamei Kumar of Langthabal Chingthak near
Manipur University, Canchipur, Imphal West,
Manipur.
4. Pheiroijam Robinson Singh @ Boicha, aged about
34 years, S/o Ph. Ibohal Singh of Canchipur near
Manipur University, Gate, Imphal West, Manipur.
5. Phoiroijam (O) Longjam Ningol Landhoni Devi,
aged about 67 years, W/o Ph. Ibohal Singh of
Canchipur near Manipur University, Gate, Imphal
West, Manipur.
6. Pheiroijam (N) Karam (O) Romita Devi, aged
about 43 years, D/o Ph. Ibohal Singh of
Kwakeithel Thiyam Leikai, P.O. Imphal, P.S.
Lamphel, Imphal West District, Manipur.

...Respondent

B E F O R E
HON'BLE MRS. JUSTICE GOLMEI GAIPHULSHILLU

For the Petitioner : Mr. S. Abung, Advocate
For the Respondents : Mr. W. Darakishwor, Senior PCCG
Mr. M. Gunedhor, Advocate
Date of Hearing : 20.09.2024
Date of judgment & Order : **26.09.2024**

JUDGMENT & ORDER
(CAV)

[1] Heard Mr. S. Abung, learned counsel appearing for the petitioner, Mr. W. Darakishwor, learned senior PCCG appearing for the respondent No. 1 and Mr. M. Gunedhor, learned counsel appearing for the respondents No. 2 to 6.

[2] The present petition has been filed under Section 482 of Cr.P.C. read with Section 528 of BNSS with the following prayers:

- (i) Kindly admit this Criminal Petition;
- (ii) Kindly quash and set aside the order dated 14.08.2024 passed in Misc. Case No. 276 of 2024 of CJM, Imphal West and
- (iii) Any order, direction as deemed fit by this Hon'ble Court.

[3] The present petitioner is the father of victim, Late Ningthoujam Babysana Chanu, whose right to cross-examine the 2 (two) witnesses on his behalf by counsel called by the Ld. CJM, Imphal West, was denied violating the right under Section 138 of the Indian Evidence Act which governed the law of examination of witness. Therefore, he filed an application being Misc. Case No. 276 of 2024 before the Ld. CJM, Imphal West (**Annexure – A/1**). However, vide order dated 02.08.2024, the application was rejected by the Ld. CJM, Imphal West without applying judicial and common sense that the right to call witnesses for examination by Ld. CJM, Imphal West is governed by Section 138 of Indian Evidence Act. This law is not made to exercise her discretionary power, it is for both sides (**Annexure – A/2**). The operative portion of the said order is extracted herein below:

"Perused the record. Upon perusal of the record, this Court vide order dated 15-01-2024 and 19-03-2024 had examined 2 (two) experts namely Shri Sujit Kumar Mallick and Dr.S. Joychandra Singh respectively in c/w their Report in the referred CBI case. The same may be for the satisfaction of the Court in c/w the Report submitted by the above named Experts. The prayer for the petitioner/informant in the present application is for recalling the said Court witnesses/Expert for cross-examination. This Court is of the view that in the referred CBI case, the Investigating Authority after thorough investigation had submitted Final Report and not a charge sheet and the case is pending for hearing. The proceeding as such is not trial and there should not be question for examination of any witnesses or cross-examination of the said witnesses. If in case, the informant is not satisfied with the Final Report/expert opinion and could not accept and have

objection to the Final Report submitted by the CBI (the investigating authority), the only option is to file a Protest petition and nothing else.

As a result, the prayer of the petitioner/informant for recalling the two court witnesses for cross-examination is hereby rejected.”

[4] The learned counsel appearing for the petitioner submits that under Section 138 of the Indian Evidence Act, the Ld. CJM, Imphal West called the witnesses and examined them, as such there is no difference whether it is Court witnesses or otherwise. The law provides examination-in-chief, cross-examination and re-examination, as such cross examination to the other party is a legal right which cannot be barred by discretionary power of any judicial Magistrate.

Vide judgment and order dated 18.03.2024 passed in Criminal Appeal No.(s) 1664-1665 of 2024, the Hon'ble Apex Court held that "The normal rule is that witnesses shall be examined in the order laid down in Section 138 of the Indian Evidence Act, 1872." The Hon'ble Apex Court further held that recording only the examination-in-chief without recording cross-examination is contrary to law.

[5] The learned counsel appearing for the petitioner also submits that it is well settled law that any witnesses examined by the Court, the opposite party shall have the right to cross-examine, otherwise the value of evidence adduced from the person called for giving evidence shall be one sided which eventually affect the principal

of law as laid down in legal maxim *audi alteram partem*. It is against the law that a party in a Criminal Misc. Case is not allowed to cross-examine the witnesses called by the Court.

[6] **Further, the learned counsel appearing for the petitioner submits that the witnesses need for cross-examination by the victim represented counsel since they have done some unethical acts while forensic examinations were conducted in their capacities, for instance, they deliberately ignored the confirmation of blood sample of the victim girl, one by doing from blood sample found in victim's underwear and not doing from the direct blood sample of victim girl and the other belatedly done and the sample was made expired. Thus, two of them brought to the conclusion of "possible case" and destroyed the evidential value of the present case. Unethical mixing of blood samples need to be cross-examined and whether a retired person be allowed by law to give expert opinion etc.**

[7] The learned counsel appearing for the respondents Mr. M. Gunedhor submits that under Article 311 of the Indian Evidence Act, the Court can call, at any stage of the trial, the witnesses as Court witnesses and for Court's reference for the particular matter. In the present case of the subject matter, the Ld. CJM, Imphal West called the two experts just to confirm the opinion given by the expert in connection with the present case i.e. during the course of hearing of the FR submitted by the prosecution (CBI), mention is made here that after handing over the case for investigation to the CBI and the CBI

after due investigation submitted the case on FR. However, the petitioner filed protest petition against the said FR and the Ld. CJM is hearing the parties, in that regard. The Ld. CJM for her reference called the two experts and accordingly, examined them as CW – 1 and CW – 2. Both the witnesses were not cross-examined. The present petitioner filed an application before the Ld. CJM to allow him to cross-examine the said two Court witnesses. The Ld. CJM, after hearing the learned counsels for the parties, rejected the prayer of the petitioner.

Article 311 of the Indian Evidence Act reads as follows:

"Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case."

[8] The learned counsel appearing for the respondent No. 1 Mr. W. Darakishwor, senior PCCG submits that the stage of the case is not the trial but the stage of hearing of the final report submitted by the Investigating Officer and calling and examination of the said two experts were just for reference of the Ld. CJM Court nothing else. The petitioner can as such the right to cross-examine the experts in the later stage of the trial.

[9] Perused the impugned order as well as the statements of the CW – 1 and CW – 2. On perusal of the impugned order as well as the statements of the two CWs, it is evident that the Ld. CJM Court called and examined just to compare the documents available in the

record i.e. the report submitted and to ascertain the same with the documents brought by the said two witnesses (experts) for Court's reference.

It is further seen that the proceeding as such at this stage is not a trial but, at the stage of hearing of the said final report submitted by the Investigation Authority, as such question for re-examination or cross-examination of the said two witnesses is not called for.

[10] Taking into consideration the above factual position with the above discussions made therein, the present petition filed by the petitioner is dismissed and disposed of.

JUDGE

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