

**HIGH COURT OF TRIPURA
AGARTALA
Crl. Rev. P. No.20 of 2024**

The Chief Manager,
LICI, Agartala, Branch No.2
TRTC Complex, P.O. Agartala-799001,
P.S.- West Agartala, District – West Tripura.

-----Petitioner(s)

Versus

1. The State of Tripura

To be represented by learned Public Prosecutor.

2. Sri Gangesh Chakraborty

son of late Gurukinkar Chakraborty,
resident of Pragati road, P.S. West Agartala,
District – West Tripura

3. Sri Gourish Chakraborty

son of late Gurukinkar Chakraborty,
resident of Pragati road,
P.S. West Agartala, District – West Tripura.

-----Respondent(s)

For Petitioner(s)	:	Mr. A. Bhattacharjee, Adv.
For Respondent(s)	:	Mr. S. Ghosh, Addl. P.P, Mr. S. D. Choudhuri, Adv.
Date of hearing	:	13.05.2024
Date of delivery of Judgment & Order	:	15.05.2024
Whether fit for reporting	:	YES

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order

This Criminal Revision Petition under Section 397 of Cr.P.C. read with Section 401 of Cr.P.C. is filed challenging the impugned judgment and order dated 13.03.2024 passed in Crl. App. No.20 of 2016 by Learned Sessions Judge, West Tripura, Agartala.

2. Heard Mr. A. Bhattacharjee, Learned Counsel for the petitioner. Also heard Mr. S. Ghosh, Learned Addl. P.P. representing the State and Mr. S. D. Choudhuri, Learned Counsel representing the respondent nos.2 and 3.

3. The petitioner in this petition has submitted that an appeal was preferred by the Senior Manager, LIC, Agartala on 04.03.2016 which was numbered as CrI. App. No.20 of 2016 under Section 372 of Cr.P.C. read with Section 374 of Cr.P.C. challenging the judgment dated 23.12.2015 delivered by Learned CJM, West Tripura, Agartala in connection with G.R. No.230 of 2002 acquitting the respondent nos.2 and 3 from the charge framed against them under Section 409/471/468/411 of IPC.

4. According to the petitioner, during the pendency of appeal on 20.07.2021 in course of hearing of argument, Learned Counsel for the appellant i.e. the petitioner herein submitted that some additional evidence was necessary to record in the case in order to arrive at a proper decision in the appeal and on the same date, Learned Counsel for the petitioner filed one application under Section 391(1) of Cr.P.C for recording additional evidence in dealing with the appeal and on 01.10.2021, Learned Sessions Judge, West Tripura, Agartala after hearing both the parties rejected the same petition and being aggrieved with the said order dated 01.10.2021 passed by Learned Sessions Judge, the petitioner preferred a Criminal petition along with a interlocutory application before the High

Court against the said order dated 01.10.2021, which were numbered as Crl. Petn. No.47 of 2021 and I.A. No.1 of 2021. After that, by a judgment and order dated 24.02.2022, this High Court allowed the Crl. Petn. No.47 of 2021 filed by the petitioner setting aside the order dated 01.10.2021 passed by Learned Sessions Judge, West Tripura, Agartala subject to recovery of cost of Rs.2,00,000/- from the concerned officers of LICHI who were posted in the concerned Branch during the period with effect from 10.05.1999 to 14.06.2021.

5. Further, according to petitioner, on 01.11.2022, Learned Counsel for the petitioner informed the Learned Sessions Judge, West Tripura, Agartala, regarding the realization of Rs.2,00,000/- from 10 officials of LICHI in compliance with the order of the High Court of Tripura and accordingly, Learned Sessions Judge gave an opportunity to the petitioner to proceed further with the application under Section 391(1) of Cr.P.C. and ultimately on 05.02.2024, Learned P.P. produced all documents by a Firisti before the Learned Sessions Judge and on 02.03.2024, Learned Counsel for the petitioner filed the name of one witness namely Shri I. S. Rao, Asstt. Government Examiner of question documents, Kolkata, West Bengal.

6. Thereafter, by Judgment and Order dated 13.03.2024, Learned Sessions Judge, West Tripura, disposed of the Crl. App. No.20 of 2016 with the following observations:

"So, considering the facts and circumstances of the case I find it prudent to send back the original case

record of G.R. 230 of 2002 with all the documents including the documents produced by learned Public Prosecutor before this Court on 5.2.2024 to the Court of learned Chief Judicial Magistrate, West Tripura, Agartala with a direction to the learned Trial Court to record the additional evidence by summoning Shri I.S. Rao, Asstt. Government Examiner of question documents, Kolkata, West Bengal and thereafter, to examine the accused respondents once again U/S. 313 Cr.P.C followed by fresh argument and judgment and the entire procedure shall be concluded by the learned Trial Court within 30th June, 2024.

At this stage Mr. Sandip Dutta Choudhuri, learned advocate for the respondent Nos.1 and 2 vehemently opposed the practice adopted by the prosecution side so far in this case. It is submitted by the learned Counsel that his clients had already consumed more than 22 years before the Courts of law in connection with this case and they can no way be compensated for the loss of such 22 valuable years from their lives. Accordingly, learned counsel verbally submitted that specific direction may be issued from this Court to the learned Trial Court as well as to the learned Public Prosecutor not to consume further valuable times of the respondent Nos.1 and 2 on the ground of appointment of special Public Prosecutor etc. as prescribed by Sections 301 and 302 of Cr.P.C.

Heard and considered.

Learned Trial Court as well as the learned Public Prosecutor are requested to keep the oral submission made by Mr. Sandip Dutta Choudhuri, learned Counsel for the respondent Nos.1 and 2 in mind while fixing the dates for further proceeding of the trial.

Office is directed to supply a copy of this order each, to the learned Counsel of all the parties to this Appeal, free of cost, at once.

Office is also directed to send back the original case record of G.R. 230 of 2002 with all the documents including the documents produced by learned Public Prosecutor before this Court on 5.2.2024 to the Court of learned Chief Judicial Magistrate, West Tripura, Agartala, on or before 1st April, 2024.

Parties are directed to appear before the learned Trial Court on 01-04-2024.

This Criminal Appeal is accordingly disposed of on contest."

Challenging that order, the present petitioner has preferred this revision petition before this High Court.

7. In course of hearing of argument, Learned Counsel for the petitioner, Mr. A. Bhattacharjee fairly submitted that the Learned Court below by the said order has finally disposed of

Crl. App. No.20 of 2016 but the Learned Court below without adhering to the provision of Section 391(2) of Cr.P.C passed the order which was not warranted by law and thus, a grave injustice has been caused to the petitioner. So, Learned Counsel for the petitioner submitted before the Court to allow the revision petition and to set aside the order dated 13.03.2024 passed by Learned Sessions Judge, West Tripura Agartala.

8. On the other hand, Learned Counsel Mr. S. D. Choudhuri representing the respondent nos.2 and 3 submitted that the matter is very old pending and the respondent nos.2 and 3 are being unnecessarily harassed by the petitioner-LICI without any basis and by that impugned order, no injustice was caused to the petitioner rather it was the respondent nos.2 and 3 who ought to have been prejudiced by the said order and submitted before the Court that in Section 386 of Cr.P.C, the power of the Appellate Court is given and the Learned Court below has rightly disposed of the appeal by the said order dated 13.03.2024 and there was no illegality or impropriety in the order passed by Learned Sessions Judge and urged for upholding the order of Learned Sessions Judge, West Tripura, Agartala dismissing the present revision petition.

9. Learned Addl. P.P., Mr. S. Ghosh appearing on behalf of the State-respondent at this stage submitted that he is fully agree with the submission made by Learned Counsel representing the petitioner and submitted that the order dated 13.03.2024 passed by Learned Sessions Judge, West Tripura,

Agartala suffers from infirmities for which the interference of Court is required and urged before the Court to consider the revision petition filed by the present petitioner. Considered.

10. I have heard detailed submission of Learned Counsel of the rival parties and gone through the order passed by the Learned Court below and also the relevant papers connected therewith.

11. There is no dispute on record that the matter is long pending one and the present petitioner preferred an appeal before the Court of Learned Sessions Judge, West Tripura, Agartala on 04.03.2016 challenging the order of acquittal delivered by Learned CJM, West Tripura, Agartala by judgment dated 23.12.2015 in connection with G.R. No.230 of 2002 acquitting the respondent nos.2 and 3 from the charges framed against them under Section 409/471/468/411 of IPC and in course of hearing of appeal before the Learned Appellate Court, the present petitioner preferred an application under Section 391(1) of Cr.P.C and after hearing both the sides, Learned Sessions Judge by order dated 13.03.2024 finally disposed of the appeal with certain direction and being aggrieved by that order, the petitioner has preferred this petition before this Court.

12. Now, for the sake of convenience I would like to refer hereinbelow the relevant provision of Section 386 of Cr.P.C which provides as under:

"386. Powers of the Appellate Court.- After perusing such record and hearing the appellant or his

pleader, if he appears, and the Public Prosecutor if he appears, and in case of an appeal under Section 377 or Section 378, the accused, if he appears, the Appellate Court may, if it considers that there is no sufficient ground for interfering, dismiss the appeal, or may-

(a) in an appeal from an order of acquittal, reverse such order and direct that further inquiry be made, or that the accused be re-tried or committed for trial, as the case may be, or find him guilty and pass sentence on him according to law;

(b) in an appeal from a conviction-

i) reverse the finding and sentence and acquit or discharge the accused, or order him to be re-tried by a Court of competent jurisdiction subordinate to such Appellate Court or committed for trial, or

ii) alter the finding, maintaining the sentence, or

iii) with or without altering the finding, alter the nature or the extent, or the nature and extent, of the sentence, but not so as to enhance the same;

(c) in an appeal for enhancement of sentence-

i) reverse the finding and sentence and acquit or discharge the accused or order him to be re-tried by a Court competent to try the offence, or

ii) alter the finding maintaining the sentence, or

iii) with or without altering the finding, alter the nature or the extent, or the nature and extent, of the sentence, so as to enhance or reduce the same;

(d) in an appeal from any other, alter or reverse such order;

(e) make any amendment or any consequential or incidental order that may be just or proper."

13. Further, I would also like to refer herein below the relevant provision of Section 391 of Cr.P.C., which also provides as under:

"391. Appellate Court may take further evidence or direct it to be taken.-

(1) In dealing with any appeal under this Chapter, the Appellate Court, if it thinks additional evidence

to be necessary, shall record its reasons and may either take such evidence itself, or direct it to be taken by a Magistrate, or when the Appellate Court is a High Court, by a Court of Session or a Magistrate.

(2) When the additional evidence is taken by the Court of Session or the Magistrate, it or he shall certify such evidence to the Appellate Court, and such Court shall thereupon proceed to dispose of the appeal.

(3) The accused or his pleader shall have the right to be present when the additional evidence is taken.

(4) The taking of evidence under this section shall be subject to the provisions of Chapter XXIII, as if it were an inquiry."

From the aforesaid provisions of law, it appears that the power of the Appellate Court is mentioned in Section 386 of Cr.P.C. and the power of the Appellate Court for taking further evidence is mentioned in Section 391 of Cr.P.C. Now, if we go through the aforesaid provision of Section 391 of Cr.P.C. wherein it is clearly mentioned that the Appellate Court in the appeal, if it thinks that the additional evidence is necessary, shall record its reasons and may either take such evidence itself or direct it to be taken by a Magistrate, or when the Appellate Court is a High Court, by a Court of Sessions or a Magistrate and further it is also mentioned that when the additional evidence is taken by the Court of Sessions or the Magistrate, it or he shall certify such evidence to the Appellate Court, and such Court shall thereupon proceed to dispose of the appeal. Further, on harmonious reading of Section 386 and Section 391 of Cr.P.C, it appears that Section 391 of Cr.P.C would be applied only if the appeal is pending for disposal, not otherwise. Furthermore, if the power under Section 391 of Cr.P.C is applied by an Appellate Court, in that case, till disposal of the procedure

prescribed in Section 391 of Cr.P.C, there will be no scope on the part of the concerned Appellate Court to dispose of the appeal.

14. Here, in this case, Learned Sessions Judge, by the impugned order dated 13.03.2024, directed the Learned Trial Court i.e. Learned CJM, West Tripura to record the additional evidence of one Shri I. S. Rao, Asstt. Government Examiner of question documents, Kolkata, West Bengal and thereupon to examine the accused respondent once again under Section 313 of Cr.P.C followed by fresh argument and judgment with a further direction to complete the process by 30.06.2024.

15. From the aforesaid order, it appears that there was no illegality in respect of directing Learned CJM, West Tripura, Agartala to record additional evidence, as ordered by the Learned Sessions Court but on perusal of the aforesaid provision of Section 391(2) of Cr.P.C, it appears that the Learned Sessions Judge committed error in delivering the judgment/order to direct Learned CJM to examine the accused once again under Section 313 of Cr.P.C and to pass a fresh judgment after hearing of arguments which in my considered view, Learned Sessions Judge has committed error in passing that portion of order. Because the legislature has clearly expressed that the Learned Sessions Judge being an Appellate Court itself may take additional evidence or the Learned Sessions Judge may direct the Learned Lower Court to take additional evidence in case of need and if the additional

evidence is recorded by the Learned Court below i.e. the Magistrate, here, the Learned CJM then he shall be bound to certify such evidence to the Appellate Court and such Court shall thereupon proceed to dispose of the appeal as per law. But the Learned Sessions Judge misconstruing the aforesaid provision of law has passed an order directed Learned CJM, West Tripura to record evidence and thereafter to examine the accused again under Section 313 of Cr.P.C and to deliver a fresh judgment after hearing of arguments which in my considered view Learned Sessions Judge has failed to appreciate the legal provision properly and thus passed the order which in my considered view Learned Session Judge, West Tripura, Agartala had no such authority to pass such direction and to dispose of the appeal finally.

16. In course of hearing of argument, Learned Counsel for the petitioner referred one judgment of Delhi High Court dated **01.03.2012** in **Charanjeet Gaba v. Arjun Lal Ahuja & anr.** bearing case no. Crl. M.C. 3485 of 2010 and Crl. MA 17131 of 2010(stay) reported in **2012 SCC OnLine Del 1259**, wherein the Hon'ble Delhi High Court made the following observation at para 5:

"5. This section contemplates that the Appellate Court may either record further evidence itself or direct it to be taken by the trial court. The powers of the Appellate Court in permitting recording of additional evidence though unbridled, has to be within the ambit and scope of provisions of this Section. For permitting additional evidence at the stage of hearing of appeal, the Appellate Court needed to satisfy that the additional evidence that was sought to be adduced at that stage was necessary. For recording such satisfaction, it was obligatory to record reasons. The expression, "if it

thinks additional evidence to be necessary” is of wide amplitude. The Appellate Court is empowered to exercise the powers to weed out the infirmities in the course of furthering substantial justice.”

17. So, after hearing the rival parties and also after going through the aforesaid citation referred by Learned Counsel for the revision petitioner, it appears that the interference of the Court is required, modifying the order of the Learned Sessions Judge.

18. In the result, the revision petition filed by the petitioner is hereby partly allowed on contest. The order dated 13.03.2024 passed by Learned Sessions Judge, West Tripura, Agartala in Crl. App. No.20 of 2016 is accordingly modified. Learned CJM, West Tripura, Agartala is directed to record the evidence of witness Shri I. S. Rao, Asstt. Government Examiner of question documents, Kolkata, West Bengal immediately as per direction given by Learned Sessions Judge, West Tripura, Agartala and to certify such evidence to the Appellate Court and its connected documents including relevant case records so as to enable the Learned Sessions Judge, West Tripura, Agartala to dispose of the appeal preferred by the petitioner against the order of acquittal passed by Learned CJM, West Tripura, Agartala dated 23.12.2015 in connection with GR No.230 of 2002, on merit. Learned CJM, West Tripura is further asked to complete the process of recording additional evidence of the aforesaid witness Shri I. S. Rao, Asstt. Government Examiner of question documents, Kolkata, West Bengal latest by 30.06.2024 and to certify such evidence to Learned Sessions Judge by

10.07.2024 positively and thereafter, Learned Sessions Judge shall dispose of the appeal on merit after hearing both the parties latest by 31.07.2024. Both the parties or their respective Counsel shall appear before the Court of Learned CJM, West Tripura, Agartala on 28.05.2024 for seeking further instructions in this matter.

A copy of this order be communicated to Learned Sessions Judge, West Tripura, Agartala for information and compliance. Also, a copy of this order be communicated to Learned CJM, West Tripura, Agartala for information and compliance. A copy of this order also be supplied to Learned Counsel for the petitioner and Learned Counsel for the respondent nos.2 and 3 immediately.

Send down the LCRs, if any along with copy of this order/Judgment.

Pending applications, if any, also stands disposed of.

JUDGE