

**HIGH COURT OF TRIPURA
AGARTALA**

Crl. Rev. P. No.67 of 2024

Sri Israil Miah, Son of Achkar Miah, resident of Ganganagar, P.S. Kamalpur,
District- Dhalai, Tripura.

..... Petitioner(s).

Versus

The State of Tripura

..... Respondent(s).

For Petitioner (s) : Ms. P. Chakraborty, Advocate.

For Respondent(s) : Mr. Raju Datta, Public Prosecutor.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

ORDER

13/11/2024

Heard learned counsel for the parties.

[2] In a POCSO case which is under trial for last four years i.e. Special POCSO No.13/2019, the defence failed to cross-examine the prosecution witness Nos.7 & 8 and as such, their right to cross-examine was closed on 19.01.2024. Thereafter, a petition for recalling those prosecution witnesses and a charge-sheet witness No.11 was made which has been rejected by order dated 06.02.2024 (Annexure-B). The order dated 06.02.2024 has never been challenged; instead a fresh petition under Section 311 of the Cr.P.C. was filed for recalling the witnesses for their cross-examination which has been rejected again on 23.09.2024 by the order impugned (Annexure-D). The learned trial Court has referred to the order dated 06.02.2024 by which such prayer was rejected earlier by his learned predecessor and the order remained unchallenged.

[3] It appears from perusal of the records and the impugned order that one accused Kiran Miah @ Ujir Miah is in Malaysia and reminders have been issued for execution of warrant against the said accused. Summons have

also been issued upon the IO by the learned trial Court. Trial of POCSO cases have to be concluded in a time bound manner. As per Section 35 of the POCSO Act, the Special Court shall complete the trial, as far as possible, within a period of one year from the date of taking cognizance of the offence.

[4] Having heard the learned counsel for the parties, this Court is of the considered view that the impugned order dated 23.09.2024 does not require any interreference as the learned trial Court had rightly refused to allow a second application under Section 311 of the Cr.P.C. for recalling PW Nos.7, 8 & 11 for cross-examination at the behest of the accused when such a prayer was rejected earlier on 06.02.2024 by the learned predecessor Court with a detailed reason relying upon two decisions of the Apex Court i.e. in the case of *Vinod Kumar Versus State of Punjab* reported in (2015) 3 SCC 220 and in the case of *Akil Alias Javed Versus State (NCT of Delhi)* reported in (2013) 7 SCC 125. The learned trial Court could not have reviewed the order of rejection dated 06.02.2024. The order dated 06.02.2024 has remained unchallenged, meanwhile trial must have progressed further. The timeline for conclusion of trial under POCSO Act has to be adhered to. In such circumstances, this Court does not find any reason to interfere in the impugned order.

[5] Moreover, it appears that since one of the accused persons is absconding and has gone to a foreign country and an effort for ensuring his appearance has not fructified, it is open for the learned Special Judge, POCSO to take a decision to split up the trial and proceed against the remaining accused persons who have appeared so that the trial is not further delayed. However, this would not preclude the learned trial Court from taking

necessary steps and directions upon investigating authority to securing the presence of the absconding accused.

[6] Accordingly, the instant petition is dismissed. Pending application(s), if any, shall stand disposed of.

(APARESH KUMAR SINGH), CJ



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