

Serial No. 13
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl. Petn. No. 5 of 2024

Date of Order: 13.05.2024

Shri Niatsingh Wanniang
S/o. (L) S. Thongni.
R/o. H.No.24 Mawmerang Village
Southwest Khasi Hills, District,
Pin-793114, Meghalaya.

Vs. 1. State of Meghalaya
Rep. by The Superintendent
of Police, Southwest Khasi
Hills District, Meghalaya.

2. The Officer In Charge,
Mawkyrwat Police Station
Southwest Khasi Hills
District, Meghalaya.

Coram:

Hon'ble Mr. B. Bhattacharjee, Judge

Appearance:

For the Petitioner/Appellant(s)	:	Mr. N. Syngkon, Adv.
For the Respondent(s)	:	Mr. N.D. Chullai, AAG with Mr. J.N. Rynjah, GA.

i)	Whether approved for reporting in Law journals etc.:	Yes/No
ii)	Whether approved for publication in press:	Yes/No

J U D G M E N T (Oral)

By this application under Section 482 CrPC, the petitioner has challenged the order dated 29.06.2022 and 06.12.2023 passed by the learned Sessions Judge, Southwest Khasi Hills District, Mawkyrwat in

Sessions Case No. 34 of 2020 under Section 376/506 IPC by which orders the trial court had taken into record the FSL report submitted by the prosecution and also allowed summoning of additional witness on the basis of an application under Section 311 CrPC.

1. The brief fact of the case is that on 02.04.2011, a written FIR was lodged by the complainant alleging that the petitioner herein had sexually assaulted his daughter for last one month and also threatened her with dire consequences if she disclosed the matter to anyone. On the basis of the said FIR, Mawkyrwat PS Case No. 6(4)2011 was registered and matter was investigated into by the police. On completion of the investigation, a charge sheet under Section 376/506 IPC was filed against the petitioner and thereafter matter was taken up for trial as Sessions Case No. 34 of 2020 under Section 376/506 IPC. After the conclusion of the prosecution evidence and examination of the petitioner under Section 313 CrPC, the matter was placed for final argument and at that stage on 29.06.2022, the Investigating Officer submitted the copy of original FSL report which was taken on record. Thereafter, an application under Section 311 CrPC was filed by the prosecution on 03.08.2022 for summoning the Scientific Officer, Directorate of Forensic Science, Assam for proving the FSL report. The learned trial court vide order dated 06.12.2023 allowed the said application. Being aggrieved, the petitioner has put a challenge to the order dated 29.06.2022 and 06.12.2023 of the trial court.

2. Mr. N. Syngkon, learned counsel for the petitioner submits that the name of the witness who has been sought to be summoned does not appear in the list of prosecution witness provided with the charge sheet filed in the case. He further submits that even the order by which the learned trial

court had taken into record the FSL report is totally wrong in view of the fact that the mandate of law as prescribed in Section 173(5) and Section 173(8) CrPC has been overlooked by the learned trial court. He contends that filing of document by the prosecution at the belated stage of trial is not contemplated in law and the only way of taking into record any fresh document can only be by way of a supplementary chargesheet which requires adherence to the provisions of Sub-Sections (2) to (6) of Section 173 CrPC. He submits that the learned trial court has totally ignored the settled provisions of law and proceeded mechanically to allow the application under Section 311 CrPC without recording any valid cause or reason. He also contends that it is not permissible to summon any additional witness at the final stage of the trial and the impugned orders are liable to be set aside and quashed. The learned counsel places reliance on the decisions of High Court of Chattisgarh in CRA No. 407 of 2011 and High Court of Karnataka in Criminal Petition No.2249 of 2016 to impress upon the Court about the stage of permissibility of filing of supplementary chargesheet in a criminal case.

3. On the other hand, Mr. N.D. Chullai, learned AAG appearing for the State respondents contends that submission of the FSL report by the prosecution at a later stage does not amount to filing of a supplementary chargesheet in the matter. He submits that it is only submission of additional document which was done by taking prior permission by the trial court. The learned AAG draws the attention of this Court to the impugned order dated 06.12.2023 and submits that at the stage of filing of the charge sheet, the concerned Investigating Officer had made a prayer for submission of DNA FSL report at a later stage which was allowed vide order dated 01.11.2013. He further submits that filing of the FSL report at

a later stage cannot be equated with the filing of the supplementary chargesheet in terms of Section 173 (8) CrPC as the FSL report is not the outcome of any further investigation. He places reliance on a decision of the Apex Court reported in (2002) 5 SCC 82, *Central Bureau of Investigation Vs. R.S. Pal & Anr. (para-7)*, and submits that it is permissible in law to produce additional documents which were gathered prior to or subsequent to the investigation. He also submits that there is nothing wrong in the order of the trial court by which the application of the prosecution under Section 311 CrPC was allowed as the additional witness sought to be examined is only for the purpose of proving the FSL report and the petitioner will have all the opportunity to cross examine the said witness. He contends that Section 311 CrPC allows summoning of additional witness at any stage when evidence of such person appears to be essential for just and proper decision of the case. He submits that there is no merit in the contention of the petitioner and the criminal petition deserves to be dismissed forthwith.

4. Heard learned counsel for the parties.

5. A perusal of the materials on record reveals that at the time of the filing of the charge sheet in the case, the concerned Investigating Officer had made a prayer for submission of DNA FSL report at a later stage after the receipt of the same which was allowed vide order dated 01.11.2013. Subsequently, the FSL report was submitted on 29.06.2022 and taken into record by the trial court. The above facts are reflected in the impugned order dated 06.12.2023 of the trial court. The petitioner did not make any immediate challenge to the submission of the FSL report by the prosecution. It is only after passing of the impugned order 06.12.2023 by

which the summoning of the additional witness was allowed by the trial court, the petitioner has put a challenge to the order dated 29.06.2022 along with the order dated 06.12.2023.

6. Section 311 CrPC provides that any court may, at any stage of any inquiry, trial or other proceeding summon any person as a witness if the evidence of such person appears to be essential to the just decision of the case. What would be essential evidence for just and proper decision of the case is to be decided by the court while considering an application under Section 311 CrPC. In the instant case, the learned trial court while passing the order dated 06.12.2023 had taken into consideration the fact that the case is with regard to an offence under Section 376/506 IPC relating to a victim of 13 years old. The learned trial court was also of the opinion that the FSL report in the case will help the court to arrive at a just decision of the case. Nothing has been placed before this Court to project that the petitioner will be prejudiced in the matter if additional witness is examined to confirm the correctness of the allegation made by the prosecution in the case. There is also nothing specific pointed out by the petitioner to project any bar of law for the trial court to entertain an application under Section 311 CrPC at that stage.

7. The objection raised by the petitioner with regard to the submission of the FSL report by taking shelter of Section 173(5) and (8) CrPC stands answered by the proposition of law laid down in *Central Bureau of Investigation (supra)*, para 7 whereof reads as follows: -

“ 7. From the aforesaid sub-sections, it is apparent that normally, the investigating officer is required to produce all the relevant documents at the time of submitting the charge-sheet. At the same time, as there is no

specific prohibition, it cannot be held that the additional documents cannot be produced subsequently. If some mistake is committed in not producing the relevant documents at the time of submitting the report or charge-sheet, it is always open to the investigating officer to produce the same with the permission of the Court. In our view, considering the preliminary stage of prosecution and the context in which police officer is required to forward to the Magistrate all the documents or the relevant extracts thereof on which prosecution proposes to rely, the word "shall" used in sub-section (5) cannot be interpreted as mandatory, but as directory. Normally, the documents gathered during the investigation upon which the prosecution wants to rely are required to be forwarded to the Magistrate, but if there is some omission, it would not mean that the remaining documents cannot be produced subsequently. Analogous provision under Section 173(4) of the Code of Criminal Procedure, 1898 was considered by this Court in Narayan Rao v. The State of AP (SCR at p.293) and it was held that the word 'shall' occurring in sub-section (4) of Section 173 and sub-section (3) of Section 207-A is not mandatory but only directory. Further, the scheme of sub-section (8) of Section 173 also makes it abundantly clear that even after the charge-sheet is submitted, further investigation, if called for, is not precluded. If further investigation is not precluded then there is no question of not permitting the prosecution to produce additional documents which were gathered prior to or subsequent to investigation. In such cases, there cannot be any prejudice to the accused. Hence, the impugned order passed by the Special Court cannot be sustained".

8. It is evident from the above that when further investigation is not precluded under law, then there is no question of not allowing the prosecution to produce additional documents which were gathered prior to or subsequent to investigation. The present matter, right from the filing of the charge sheet it was clear to the petitioner that some samples were sent

for forensic examination and reports are awaited. It is not a case here that the samples were sent after the commencement of the trial for forensic examination pursuant to further investigation of the case. In such a situation, it cannot be said that the petitioner will be prejudiced in any manner because of the passing of the impugned order dated 29.06.2022 and 06.12.2023 of the trial court.

9. The decisions relied upon by the learned counsel for the petitioner have no relevance in the present matter as the filing of the FSL report by the prosecution in the present case does not amount to filing of a supplementary charge sheet based upon further investigation of the matter.

10. In view of the reasons and discussions made above, there is no merit in the present criminal petition and the same stands dismissed.

Judge

Meghalaya

13.05.2024

"N. Swer, Stenographer, Gr-II"