

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl. Petn. No. 15 of 2024

Date of Order: 19.03.2024

Shri. Michael Kshiar.

S/o (L) K. Kshiar,

R/o Umladoh, Ri Bhoi District, Meghalaya. ::::Petitioner.

Vs.

State of Meghalaya.

Represented by the Special Public Prosecutor. ::::Respondent.

Coram:

Hon'ble Mr. Justice B. Bhattacharjee, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. S. Deb, Adv.

For the Respondent(s) : Mr. H. Kharmih, Addl. Sr. PP. with
Mr. S. Sengupta, Addl. Sr. PP.

ORAL:-

Heard Mr. S. Deb, learned counsel appearing for the petitioner and Mr. H. Kharmih, learned Addl. PP appearing for the State-respondent.

This is an application under Section 482 filed against the impugned order dated 19-06-2023 passed in Criminal Misc. Application No. 53 of 2023 under Section 311 Cr.P.C. by the Special Judge POCSO, Ri Bhoi District in Special (POCSO) Case No. 1 of 2019 whereby petitioner's application under Section 311 for recalling the survivor for cross-examination was rejected.

Mr. S. Deb, learned counsel for the petitioner submits that the survivor (PW 1) could not be cross-examined due to the absence of the counsel for the petitioner (accused) on that particular date when the survivor's evidence was recorded by the Trial Court. Since the survivor is a vital witness insofar as the allegation against the petitioner is concerned and the cross-examination is the only tool available to the petitioner to test the veracity of the statement made, the application under Section 311 was filed before the Trial Court praying for recalling of the survivor for cross-examination. It is the submission of the learned counsel for the petitioner that the Trial Court without taking into consideration the basic proposition of law that right of cross-examination of accused is most vital part of criminal trial, has rejected the application on some technical grounds causing serious prejudice to the petitioner.

Mr. H. Kharmih learned Addl. PP, in his usual frankness has conceded the stand of the petitioner that right of cross-examine is a vital right available to an accused and that same should not be normally denied to the accused. He submits that the prosecution will have no objection if the survivor is recalled for cross-examination by the petitioner. However, learned Addl. PP has submitted that accused should not misuse his right of cross-examination and should not take repeated adjournment in the matter.

Considering the submissions made by the learned counsels for the respective parties and that the cross-examination is the only way out to an accused to clear his name from the alleged offence, the impugned order dated 19-06-2023 is set aside. The petition filed under Section 311 by the petitioner seeking recalling of the survivor (PW 1) for cross-examination stands allowed.

The learned Trial Court shall now summon the survivor by fixing a date for her cross-examination by the petitioner. The petitioner shall ensure that the cross-examination of the survivor is taken up and completed on the same day. It is made clear that no adjournment shall be granted to the petitioner on the date fixed. In the event the petitioner fails to turn up on the particular date, the opportunity granted by this order shall automatically stand vacated.

With the above, this Crl. Petition stands allowed.

Judge

Meghalaya
19.03.2024
"Biswarup PS"