



Serial No.01
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl.Petn. No. 46 of 2024

Date of Order: 06.08.2024

Shri. Moonshine Nongkhlaw S/o A Kharbangar, R/o Nonthymmai Kynrdem village Ri Bhoi district, Meghalaya.	Vs.	State of Meghalaya. Represented by the Public Prosecutor /Special Public Prosecutor.
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....Petitioner.

....Respondent.

Coram:

Hon'ble Mr. Justice B. Bhattacharjee, Judge

Appearance:

For the Petitioner/Appellant(s)	: Mr. S. Deb, Adv.
For the Respondent(s)	: Mr. K. Khan, AAG with Mr. S. Sengupta, Addl. Sr. GA. Mr. H. Abraham, GA.

ORAL:-

By this application, the petitioner has made a prayer for interference with the impugned order dated 09-07-2024 passed in Spl.(POCSO) Case No.7 of 2021 by the Learned Special Judge (POCSO), Ri Bhoi District, Nongpoh.

Heard Mr. S. Deb, learned Counsel appearing for the petitioner and also Mr. K. Khan, learned AAG assisted by Mr. S. Sengupta, learned Addl. Sr. GA appearing for the State-respondent.



The petitioner is facing trial in POCSO Case No. 7 of 2021 under Section 3(a)/4/17 of the POCSO Act. The case of the petitioner is that on 07-07-2024, two prosecution witnesses, namely, Diolot Shabong (PW 4) and Dr. T. Sutnga (PW 5) were present before the Trial Court for recording of their evidences. The defence was represented by two Counsels, one being the local Counsel was present physically before the Court and the other leading Counsel was present through video conference. It is contended that after conclusion of the examination-in-chief of the said witnesses, the Counsel representing the petitioner through video conference desired to cross-examine the said witnesses through video conference. However, the Trial Court did not entertain cross-examination of the said witnesses through video conference. The situation compelled the local Counsel who was physically present before the Court for the petitioner to file two adjournment applications before the Trial Court. While the first adjournment application was not accepted by the Court, the second adjournment application was taken on record but after some time was returned back to the Counsel without assigning any reason thereof. Thereafter, the petitioner had no knowledge about the passing of any order by the Trial Court. The petitioner came to know about the existence of the order dated 09-07-2024 only on 15-07-2024, when he obtained a certified copy of the order. After receiving the order, the petitioner, to his utter shock and surprise, noticed that the Trial Court had recorded in the said order that the defence Counsel declined to cross-examine the witnesses present despite the opportunity provided to the Counsel and on that basis the evidences of PW4 and PW5 were closed by recording that the defence Counsel is declined to cross-examine.

The learned Counsel for the petitioner strenuously argued that no submission declining cross-examination of the witnesses present was made



on behalf of the defence on that particular date and the Trial Court has recorded the said submission under misconception and closed the opportunity of cross-examination of the PW4 and PW5 by the petitioner. He submits that right to cross-examination is a vital right available to the accused in a criminal Trial and such right shall not ordinarily be taken away from the accused. He further submits that the PW 4 and the PW 5 are vital witnesses in the trial and denial of opportunity of cross-examination of the said witnesses would amount to taking away of the petitioner's right of defence in the trial. He submits that since the impugned order dated 09-07-2024 deprive the petitioner of a fair chance of a cross-examination, the same cannot stand in the eye of law and is liable to be set aside and quashed.

The learned AAG, on the other hand, submits that the contention raised on behalf of the petitioner are totally unfounded. He submits that what submission was advanced on behalf of the petitioner before the Trial Court on that particular day is best known to the Trial Court and cannot be determined in this present proceeding. He also submits that the adjournment applications which the petitioner claimed to have filed before the Trial Court are not provided with any petition number and in such a situation it cannot be said that the adjournment applications were filed before the Trial Court. However, the learned AAG fairly concedes that right to cross-examination is a vital part of a criminal trial and an accused should not ordinarily be deprived of the opportunity.

It is indeed difficult to determine as to what had taken place before the Trial Court on the day when PW4 and PW5 were present before it for recording of their evidence. The materials enclosed in the petition before this Court are not sufficient to enable the Court to come to a definite finding with regard to the contention raised on behalf of the petitioner. However,



considering the fact that this petition primarily concerns the right of the petitioner with regard to cross-examination of prosecution witnesses in the trial faced by him and denial of such opportunity will cause serious prejudice to the defence of the petitioner, it is deemed appropriate to interfere with the impugned order dated 09-07-2024 of the learned Trial Court.

Accordingly, the order dated 09-07-2024 is set aside and quashed. The Trial Court is directed to recall the PW4 and the PW5 for cross-examination by the petitioner. The Trial Court while doing so, shall fix a specific date for cross-examination of the PW 4 and the PW5 by giving prior intimation to the petitioner. The petitioner shall also not take any adjournment on the day fixed for cross-examination of the said witnesses.

With the above direction, this Crl. Petn. No.46 of 2024 stand disposed of.

Judge

Meghalaya
06.08.2024
“Biswarup PS”