

GAHC040008242024



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
(ITANAGAR BENCH)

Case No. : Crl.Rev.P./8/2024

Vijay Kino
Son of Shri Baung Kino, resident of Sangrikwa Village, PO and PS Seppa, East
Kameng District, Arunachal Pradesh

VERSUS

The State of AP
represented by the PP of AP

Advocate for the Petitioner : Lissing Perme

Advocate for the Respondent : P P of AP

BEFORE
HONBLE MR. JUSTICE BUDI HABUNG

ORDER

Date : 28-06-2024

Heard Mr. L. Perme, learned counsel for the petitioner. I have also heard Ms. L. Hage, learned Additional PP for the State of AP.

2. The petitioner is aggrieved by a part of the order dated 20.06.2024 and 21.06.2024 passed by the learned Special Judge, POCSO, Bomdila in POCSO case No. 03/2024 whereby the learned Trial court after examination of the prosecution witness Nos. 1 to 7 has discharged them without giving an

opportunity for cross examination to the learned defense counsel for the accused, who was absent on the said dates.

3. The case of the petitioner is that after framing charge against the accused/petitioner for offence under section 376 read with section 6 of the POCSO Act; the learned Special Judge, POCSO, Bomedila fixed the next date of case on 20.05.2024 and 21.05.2024 for examination of the prosecution witnesses. Accordingly, on the said dates, the accused/ petitioner herein along with his learned defense counsel appeared on 20.05.2024 and 21.05.2024. But on that dates, the case was not listed in the daily cause list. Thereafter the next date of the case remained uncertain. In the meantime, the learned Defense counsel for the accused/petitioner fell sick due to sudden surge of high blood pressure as he was a patient of brain stroke in the past. At about the same time, suddenly the petitioner also received an information that the next date of the case has been fixed on 2 consecutive days i.e., on 20.06.2024 and 21.06.2024. As the learned Defense counsel for the accused/petitioner was under medical treatment, the accused/petitioner attended the court alone on 20.06.2024 and 21.06.2024 without being accompanied by his defense counsel. On the said date, while presenting the medical document showing the medical history of the learned Private Defense counsel, the petitioner has made a prayer for adjournment of the case on the ground of sickness of his defense counsel. However, the learned Trial Court did not consider the prayer of the petitioner and proceeded with the examination of 7 prosecution witnesses.

4. It is the case of the petitioner that he made a prayer before the Trail court that if the court proceeded with the examination of the prosecution witnesses, his private defense counsel may be allowed to cross-examine the prosecution

witnesses on the next date and in that case, he is willing to pay adjournment cost. However, the said prayer of the accused/petitioner was also not considered and the learned Trial Court proceeded with the recording of the evidence of the prosecution witnesses on two consecutive dates i.e., on 20.06.2024 and 21.06.2024 and after recording their evidence of the prosecution witnesses, not only discharged them but also closed the cross examination of the prosecution witnesses. It is further submitted that unless the accused/petitioner is allowed to cross-examine the above mentioned 7 prosecution witnesses some of who are prime witnesses, the accused/petitioner would be caused serious prejudice, and, hence, prays for allowing the accused to cross-examine the prosecution witnesses. Hence, the accused/petitioner filed this criminal revision petition amongst others on the ground that the accused has the right to cross-examine the prosecution witnesses and the opportunity is vested under the law to prove his innocence during the trial and, if this opportunity is not afforded to the accused, there would be serious prejudice caused to the accused person.

5. The learned counsel for the petitioner submits that the next date of the case is fixed on 01.07.2024 for further examination of the remaining prosecution witnesses, however, if the material witnesses who have already been examined on 20.06.2024 and 21.06.2024 are not allowed to be cross-examines, it would cause serious prejudice to the accused petitioner and without cross examination, the accused would not be able to prove his innocence as such, prays for setting aside the part of the order dated 20.06.2024 and 21.06.2024 whereby the prayer for allowing the accused to cross-examine the prosecution witness nos. 1 to 7 have been rejected and the cross examination of the prosecution witnesses have been closed and discharged by the learned Special Judge, POCSO, Bomdila.

6. The learned counsel for the petitioner submits that since the prosecution witness nos. 1 to 7 who have been examined on 20.06.2024 and 21.06.2024 are from Seppa, who requires to travel to Bomdila to give evidence as witnesses, the accused/petitioner is ready to bear with all the expenses to be incurred for appearance of the above prosecution witnesses from Seppa to Bomdila and back if he is allowed to cross examine them.

7. The learned Additional PP, Ms. L. Hage, submits that in the instant case since the accused/petitioner has a limited prayer for allowing his private defense counsel to cross-examine the prosecution witnesses who have already been examined on 20.06.2024 and 21.06.2024, for the ends of justice, she has no objection if the present petition is disposed of at the admission stage itself with a direction to the accused/petitioner to pay the adjournment cost and also to bear with the travel and stay expenses of the prosecution witness nos. 1 to 7 for appearing before the learned Trial Court at Bomdila.

8. Having considered the available records and upon hearing the parties, it appears that the above mentioned case being POCSO case no. 03/2024 was fixed on 20.05.2024 and 21.05.2024 for evidence of 11 prosecution witnesses and on the said dates the accused along with his private defense counsel appeared before the learned Trial Court. However, on the said dates the above case was not listed in the daily cause list and no order was also passed fixing the next date of appearance. Accordingly, the accused/petitioner and the his defense counsel returned home. It is also seen that it was intimated to the accused/petitioner that the case has been fixed on 20.06.2024 and 21.06.2024, however, prior to the said date as could be seen from the medical document annexed to the revision petition, that the learned private defense counsel for

the accused/petitioner fell sick, due to which he could not appear before the learned Trial court on 20.06.2024 and 21.06.2024. The record further reveals that on 20.06.2024 altogether 4 prosecution witnesses appeared and they were examined and discharged; and on 21.06.2024, 3 prosecution witnesses appeared and they were also examined and discharged. The record also reveals that although the accused/petitioner appeared on both the above dates, however the private defense counsel remained absent as he was indisposed.

9. The record reveals that the accused/petitioner was asked by the learned Trial Court to engage another defense counsel or he may seek for free Legal Aid counsel from Legal Services Authority to defend his case. However, the accused/petitioner refused to seek free legal aid counsel and denied availing the free Legal Aid counsel also to defend his case. Under the above circumstances, it appears that the learned Trial Court has closed the cross examination and discharged the prosecution witnesses.

10. Be that as it may since the prosecution witnesses examined on 20.06.2024 and 21.06.2024 seems to be a material witness to the above case, I am of the considered opinion that unless the accused is given an opportunity to cross-examine those prosecution witnesses a serious prejudice would be caused to him. Moreover, the accused/petitioner is ready and willing to bear with the travel and stay expenses of the prosecution witnesses from Seppa to Bomdila and back, if he is given an opportunity to cross-examine the said witnesses, I am of the view that the said witnesses are required to be re-called for their cross-examination by the learned private defense counsel for the accused.

11. In view of the observation made above and as agreed upon by the learned

counsel for the parties, the impugned order dated 20.06.2024 and 21.06.2024 is hereby quashed and set aside in so far as the part of the order dispensing and closing the cross-examination of the prosecution witness Nos. 1 to 7 and discharging them.

12. As a result, it is hereby directed to allow the accused to cross examine the prosecution witness nos. 1 to 7 on the condition that the accused/petitioner shall deposit a sum of Rs. 35, 000/-, before the learned Trial Court, being the travel and stay expenses for the above 7 prosecution witnesses. And on such deposition, and the same be paid Rs. 5000/- each to the prosecution witnesses Nos. 1 to 7 on their appearance before the learned Trial Court.

13. With the above, this criminal revision petition is allowed and disposed of in above terms.

JUDGE

Comparing Assistant