

GAHC030003172024



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

Case No. : Crl.Rev.P./1/2024

Sh. Thangngaihlian
S/o Kapnang (L)
R/o Khawmawi, Myanmar
P/A Thuampui, Aizawl

VERSUS

The State of Mizoram r/b the Secy. to the Govt. of Mizoram, Excise and Narcotics
Dept. and Anr.
Aizawl2:The Officer-in-charge
Anti-Narcotics Squa

Advocate for the Petitioner : Mr. C Lalfakzuala

Advocate for the Respondent : PP, Mizoram for R1 & R2

ORDER

BEFORE

HONOURABLE MR. JUSTICE KAUSHIK GOSWAMI

10.09.2024

Heard Mr. C. Lalfakzuala, learned counsel for the petitioner. Also heard Mrs. Linda L. Fambawl, learned Public Prosecutor for the State respondents.

2. This Revision Petition is filed under Section 397 read with Sections 401 & 482 of Cr.PC against the impugned Judgment & Order dated 09.04.2024 passed by the learned Judge, Special Court, ND&PS Act, 1985, Aizawl, whereby the prayer of the petitioner for recalling of PW-1 for the purpose of cross examination was rejected.

3. The facts of the case is that the petitioner was arrested on 26.03.2023 @2:10 PM at Zarkawt, Aizawl in connection with alleged recovery of 40 (forty) grams of heroin from both sides pocket of his blue color jacket and on the same day at 3:35 PM, another 313 grams of suspected heroin was seized from the possession of his co-accused Khenchung at his rented house. Charge-sheet Ex-N-80/2023 dt.27.03.2023 U/S 21(C) had been submitted to the learned Judge, Special Court, ND&PS Act, 1985 on 24.06.2024. Further, 3 (three) Prosecution Witnesses out of 8 (eight) Prosecution Witnesses has been examined so far, the present stage of the trial is for examination of Prosecution Witnesses. However, in the deposition form of PW-1, it was recorded that cross examination was deemed declined by the learned counsel for the accused Thangngaihlian.

4. The petitioner prays for setting aside the impugned Order dated 09.04.2024 passed by the learned Judge, Special Court, ND&PS Act, 1985, inasmuch as, it was passed on erroneous appreciation of facts and law and devoid of legal reasoning.

5. The petitioner is seeking to be allowed to cross-examine PW-1 so that he will have an opportunity to counter the allegations levelled against him and that he cannot be made to suffer or denied his legal rights due to the inaction or

negligence if any by the counsels.

6. Mr. C. Lalfakzuala, learned counsel for the petitioner submits that non-allowing the prayer of the petitioner for cross examining PW-1 has cause grave injustice to the party.

7. Per contra, Mrs. Linda L. Fambawl, learned Public Prosecutor for the State respondents submits that the prayer for cross examination of PW-1 is only to delay the trial.

8. Heard the parties and have perused the materials available on record.

9. Relevant portion of the Order dated 09.04.2024 is reproduced hereunder for ready reference:-

“Perused the application along with its annexure as well as the cited rulings. It is seen that cross-examination of PW No. 1 was deemed declined due to absence of learned counsel for accused-applicant on 23.10.2023. The previous counsel did not make any application for re-calling of PW No. 1, and the present learned counsel also filed this petition on 19.03.2024 that is three months after he was engaged by the accused applicant on 18.12.2023. It is true that the inaction or negligence of the learned counsel should not prejudice the accused in his defence. However, upon perusal of record and also the deposition of PW No. 1 and his seizure witnesses, it is seen that the accused-applicant was apprehended at Zarkawt by excise personnel using decoy customer and search of his residence pursued later on; and accused-No. 1 is his brother. Hence, the court opines that failure to cross-examine the PW No.1 by accused-counsel due to absence of his previous learned Counsel is unlikely to cause failure of justice, and no clash of interest between the accused-applicant and his co-accused as claimed by the learned counsel is seen. Also, in State (NCT of Delhi) v. Shiva Kumar Yadav, (2016) 2 SCC 402, it was held that mere change of counsel

cannot be a ground to recall the witness. Hence, in the instant case, the court found no adequate reason to opine that the right of the applicant is prejudiced by failure to cross-examine the seizing officer (PW No. 1) or that it could lead to failure of justice to necessitate exercise of discretionary power under section 311 Cr.PC. Hence, the instant petition is rejected and it is disposed of accordingly."

10. Apparent that the prayer for cross examination of PW-1 was deemed declined due to absence of learned counsel for the accused/appellant on 23.10.2023.

11. It further appears that later on, the new engaged counsel made a prayer to re-examine PW-1 for cross examination only. However, by the said impugned order, the said prayer was rejected.

12. It appears in the context of the present case that rejection of the prayer for cross examination of PW-1 has resulted in gross failure of justice.

13. Accordingly, this Court is of the considered view that in the ends of justice, the petitioner/accused be allowed an opportunity to re-examine PW-1 (C. Lalbiaktluanga) for the purpose of cross examination.

14. Accordingly, the Order dated 09.04.2024 passed by the learned Judge, Special Court, ND&PS Act, 1985, Aizawl in CrI.Misc.Appln. No. 72/2024 in CrI.TrI.No. 1197/2023 stands interfered with.

15. It is further directed that the Trial Court shall recall PW-1 for the purpose of cross examination immediately.

16. Let Registry intimate the Trial Court about the order passed by this Court for doing the needful.

17. It is needless to clarify that the observations made herein is in the peculiarity of the facts and circumstances of the instant case and accordingly, the same shall be not binding in any other proceedings.

JUDGE

Comparing Assistant