

**HIGH COURT OF TRIPURA
AGARTALA**

Crl. Rev. P. No.13 of 2025

1. Smt. Aparna Roy Malakar, W/o Sri Anjan Malakar;
 2. Sri Sudip Malakar, S/o Sri Anjan Malakar;
 3. Sri Deep Malakar, S/o Sri Anjan Malakar;
- All are residents of Tuchindrai Colony, P.O- Hawaibari, P.S. Teliamura, District – Khowai, Tripura.

..... Petitioner(s).

V E R S U S

1. The State of Tripura;
2. Smt. Malati Malakar, W/o Lt. Sachindra Malakar, of Tuchindrai Colony, P.O- Hawaibari, P.S. Teliamura, District – Khowai, Tripura.

..... Respondent(s).

For Petitioner(s) : Mr. K. D. Singha, Advocate.

For Respondent(s) : Mr. Raju Datta, Public Prosecutor.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Order

14/05/2025

Heard Mr. K. D. Singh, learned counsel appearing for the petitioners and Mr. Raju Datta, learned Public Prosecutor appearing for the respondent-State.

2. Request for recalling of PW-1, Smt. Malati Malakar under Section 311 of the CrPC for further cross-examination at the behest of the petitioner-accused has been declined vide impugned order dated 30.01.2025 passed in S.T.(T-2) No.12 of 2022 by Additional Sessions Judge, Khowai District, Tripura holding that no compelling reasons have been made out to recall the PW-1 for further cross-examination as it would be an abuse of the process of law. The Trial Court also observed that the PW-1 was immensely cross-examined by the defence side earlier. Being

aggrieved, the petitioners have approached this Court in present revision petition.

3. Mr. K. D. Singha, learned counsel for the petitioners has submitted that the defence side wants to draw some contradictions and omissions by further cross-examination of the PW-1. It would enable the court to arrive at a just decision which is the object underlying the Section 311 of the Code. Therefore, the prayer may be allowed.

4. Mr. Raju Datta, learned Public Prosecutor has strongly opposed the prayer. He has referred to a decision of this Court passed in ***Crl. Rev. P. No.11 of 2025*** in the case of ***Jahangir Miah Versus the State of Tripura*** dated 28.02.2025 wherein this Court has after making a reference to the decisions of the Apex Court in the case of (i) ***Swapan Kumar Chatterjee Versus Central Bureau of Investigation*** reported in ***(2019) 14 SCC 328*** and (ii) ***V. N. Patil Versus K. Niranjana Kumar & Others*** reported in ***(2021) 3 SCC 661*** declined the prayer to recall PW-1 and PW-4 for further cross-examination. He submits that the accused should not be allowed to invoke Section 311 of Cr.P.C. to fill up any lacunae in the examination of witness who has been profusely examined and cross-examined and thus discharged. Therefore, the petition may be rejected.

5. On consideration of the rival submissions of the parties, the materials on records and after going through the impugned order as well as the decisions cited by learned counsel for the petitioners in the case of ***Satbir Singh Versus State of Haryana and others*** reported in ***2023 SCC OnLine SC 1086***, this Court is also of the opinion that the accused petitioner

should not be allowed to invoke the discretionary power of the Court under Section 311 of the Cr.P.C. to fill up any lacunae in its evidence when after adequate opportunity and cross-examination of PW-1, the witness has been discharged. The principles of law as regards invocation of Section 311 of the Cr.P.C. has been referred to in the said decisions also relying upon several precedents of the point such as **Swapan Kumar Chatterjee** (Supra). The opinion of the Apex Court at paragraph Nos. 10, 11 and 12 in the case of **Swapan Kumar Chatterjee** (Supra) is extracted hereunder:

“10. The first part of this section which is permissive gives purely discretionary authority to the criminal court and enables it at any stage of inquiry, trial or other proceedings under the Code to act in one of the three ways, namely, (i) to summon any person as a witness; or (ii) to examine any person in attendance, though not summoned as a witness; or (iii) to recall and re-examine any person already examined. The second part, which is mandatory, imposes an obligation on the court (i) to summon and examine or (ii) to recall and re-examine any such person if his evidence appears to be essential to the just decision of the case.

11. It is well settled that the power conferred under Section 311 should be invoked by the court only to meet the ends of justice. The power is to be exercised only for strong and valid reasons and it should be exercised with great caution and circumspection. The court has wide power under this section to even recall witnesses for re-examination or further examination, necessary in the interest of justice, but the same has to be exercised after taking into consideration the facts and circumstances of each case. The power under this provision shall not be exercised if the court is of the view that the application has been filed as an abuse of the process of law.

12. Where the prosecution evidence has been closed long back and the reasons for non-examination of the witness earlier are not satisfactory, the summoning of the witness at belated stage would cause great prejudice to the accused and should not be allowed. Similarly, the court should not encourage the filing of successive applications for recall of a witness under this provision.”

6. It further appears on perusal of the judgment in the case of **Satbir Singh** (Supra) that the Apex Court was inclined to allow the prayer for recall of witness under Section 311 of the Cr.P.C. as at the relevant point of time in his initial deposition, there was no occasion for him to bring the relevant facts relating to similarity of data before the Court, which arose after the CFSL expert was examined. No such factual matrix is made out in the instant case. The date of impugned order is 30.01.2025. The learned Court had directed the Investigating Officer to be examined at C/S Sl. No.10. The instant revision petition was filed on 06.03.2025, and repeated adjournments were taken on behalf of the petitioners also. At this stage the trial must have progressed further.

7. Therefore, this Court does not find any reason to interfere in the impugned order. Accordingly, the instant petition is dismissed. Pending application(s), if any, shall stand disposed of.

(APARESH KUMAR SINGH), CJ