

**HIGH COURT OF TRIPURA
AGARTALA**

Crl. Petn. No.30 of 2025

Sri Dhiru Nama, S/o Lt. Bhajan Nama of Ambassa Colony, PS- Ambassa,
Dhalai

.....Petitioner(s);

Versus

The State of Tripura

.....Respondent(s).

For Petitioner(s) : Mr. Arpan Jamatia, Advocate,
Ms. Ayesha Saha Hirawat, Advocate.

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

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Order

11/07/2025

Heard Mr. Arpan Jamatia, learned counsel for the petitioner and
Mr. Raju Datta, learned Public Prosecutor for the respondent-State.

2. By the impugned order dated 27.05.2025 passed in Special (POCSO) 04 of 2024 by the learned Special Judge (POCSO), Dhalai, Ambassa, the prayer of the defence to recall PW 5 Smt. Asha Bhattacharjee for further examination has been declined. PW 5 was examined, cross examined and discharged on 20.03.2025. When the impugned order was passed, 13 out of 15 prosecution witnesses had been examined. The prayer of the Special PP to issue summons upon charge sheeted witness No.4 – Smt. Bijali Chakraborty, charge sheeted witness No.13 – Smt. Rupali Majumder, Medical Superintendent, Dhalai District Hospital, Kulai and Sri D.P. Mishra, learned CJM, Dhalai, Ambassa for examination was allowed. The learned Court took note of the provisions of Section 348 of the BNSS and the fact that PW 5 had earlier been examined and cross examined and then discharged on 20.03.2025 after giving reasonable opportunity to the defence counsel and also after taking note of the

decision rendered by this Court in the case of ***State of Tripura v. Sumit Banik*** reported in ***2022 SCC OnLine Tri 582*** was of the opinion that the prayer for recall of PW 5 should not be allowed.

3. Learned counsel for the petitioner submits that the statement made by PW 5 in her chief is at variance with the statement made by her under Section 161 of the CrPC before the IO. The petitioner accused wants to confront PW 5 with such inconsistency in her deposition by seeking her recall. Therefore, the prayer may be allowed.

4. Learned Public Prosecutor submits that it is not a case where the defence counsel was not allowed sufficient opportunity to cross examine PW 5. It is also not a case that defence was not aware of her statements made under Section 161 CrPC as it was supplied with the police papers to them. The defence now intends to fill up the lacuna and improve upon his case by calling for further examination of PW 5 which is not permissible under Section 311 of the CrPC or its *pari materia* provision i.e. Section 348 of the BNSS. It is submitted that this Court in the case of ***Jahangir Miah v. The State of Tripura*** passed in ***Crl.Rev.P. No.11 of 2025*** has relied upon decisions of the Apex Court such as in the case of ***Swapan Kumar Chatterjee v. Central Bureau of Investigation*** reported in ***(2019) 14 SCC 328*** and refused to interfere in such matters where defence has sought to recall prosecution witnesses after their discharge in order to fill up the lacuna and improve upon their case. Therefore, since the impugned order does not suffer from any error in the eye of law, it needs no interference.

5. Upon hearing learned counsel for the parties and after taking note of the materials placed from record and also on perusal of the impugned order, it appears that the petitioner accused wants to fill up his lacuna by seeking recall of PW 5 who was properly examined, cross examined and then discharged on 20.03.2025 after giving adequate opportunity to the defence. The power conferred under Section 348 of the BNSS should not be allowed to fill up the lacuna in the evidence. The Apex Court in the case of **Swapan Kumar Chatterjee** (supra) has delineated the principles in this regard. This Court has also taken similar view in the case of **Jahangir Miah** (supra) relied upon by learned Public Prosecutor. Therefore, this Court does not find any reason to interfere in the impugned order; more so when the trial is at the stage of conclusion of the evidence of PWs. The instant petition is accordingly dismissed.

6. Pending application(s), if any, shall stand disposed of.

(APARESH KUMAR SINGH), CJ