

**HIGH COURT OF TRIPURA
AGARTALA**

Crl..Petrn. No.39/2024

Shyamasree Debbarma, W/O. Rakesh Barman, resident of: Chinaihani, P.O. & P.S.-Airport, District:-West Tripura, PIN-799009.

..... Petitioner (s).

For and on behalf of:

Rakesh Barman, S/O. Late Madan Barman, resident of: Chinaihani, P.O. & P.S.-Airport, District:-West Tripura, PIN-799009.

..... Accused (s).

V E R S U S

1. The State of Tripura.

2. The L.R. & Secretary, Law & Parliamentary Affairs Department, Government of Tripura, New Secretariat Building, Gurkhabasti, P.S.:N.C.C., Agartala. (Notice to be served through the Ld. P.P., High Court of Tripura, Agartala).

3. Sri Sankar Lodh, Advocate, S/O. Lt. Tulsi Ranjan Lodh, resident of: Ramnagar Road No.8, P.O.-Ramnagar, P.S.-West Agartala, District:-West Tripura, PIN-799002. (Notice to be served at Sri Sankar Lodh, Advocate, Ld. Member, High Court Bar, Agartala).

..... Respondent(s).

For Petitioner (s)	: Mr. Samrat Kar Bhowmik, Sr. Advocate, Mr. Ezekiel Lalramzauva Darlong, Advocate, Mr. Sreekanta Bal, Advocate.
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For Respondent(s)	: Mr. Raju Datta, P.P., Mr. Rajib Saha, Addl. P.P., Mr. Sankar Lodh, Advocate.
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HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Date of hearing and judgment: **12th February, 2025.**

Whether fit for reporting : **YES.**

JUDGMENT & ORDER(ORAL)

Heard Mr. Samrat Kar Bhowmik, learned senior counsel assisted by Mr. Sreekanta Bal, learned counsel appearing for the petitioner, Mr. Raju Datta, learned Public Prosecutor assisted by Mr. Rajib Saha, learned Addl.

Public Prosecutor appearing for the respondents No.1 & 2-State and Mr. Sankar Lodh, learned counsel, respondent No.3 herein, appearing in person.

2. Petitioner represents the accused Rakesh Barman who is one of the 8(eight) accused persons in Airport P.S. case No. 2024ARP037 which was registered by the informant S.I. Srikanta Guha in relation to an incidence which took place on 30.04.2024 around 2025 hours as per telephonic information received by him that a person has been shot at Hatipara under Airport P.S. The police party rushed to the spot and found a body lying by the side of the road with bullet wounds. On being brought to ILS Hospital, the doctor declared him as dead. It alleges that from local inquiry, it was learnt that at about 2010 hours one miscreant shot upon a person namely Durga Prasanna Deb alias Biki while he was sitting in a vehicle bearing registration No.TR-06-A-0745 which was parked at Hatipara in front of one medicine shop of Sri Bikash Das of Salbagan BSF Para. He fell down on receiving the bullet injury by the side of the road from his vehicle. The miscreants fled away. Subsequently, some kith and kin of the deceased arrived at the hospital and it was learnt that 5(five) named persons including the present accused and some others have committed the murder of Durga Prasanna Deb alias Biki, S/O. Ranjit Kumar Deb of Ushabazar, Chinaihani, P.S. West Agartala in furtherance of a criminal conspiracy.

3. Pursuant to the investigation, the police has lodged charge-sheet against 8(eight) persons including the present accused Rakesh Barman on 27.07.2024 bearing Airport P.S. charge-sheet No.44 of 2024. In between, on 07.05.2024, Mr. B.N. Majumder, learned senior counsel, has been appointed as a Special Public Prosecutor to appear and conduct the case bearing

No.2024ARP037 under Sections 302/120B of the Indian Penal Code (IPC, for short) and Section 27 of the Arms Act on behalf of the State prosecution by the Law Department. Charge-sheet was filed under Sections 302/120B of the IPC and Section 27 of the Arms Act and later Section 201 of the IPC was also added. On 09.05.2024 Mr. Sankar Lodh, learned counsel, was appointed as Special Public Prosecutor to appear and conduct the case bearing No.2024ARP037 under Sections 302/120B of the IPC and Section 27 of the Arms Act on behalf of the State prosecution by the Law Department, Government of Tripura.

4. The petitioner moved an application before the learned Chief Judicial Magistrate, West Tripura, Agartala raising objections regarding appointment of the learned Advocate Mr. Sankar Lodh on behalf of the prosecution. It was asserted that Mr. Sankar Lodh was engaged as a counsel of Rakesh Barman and Debabrata Barman in connection with Airport P.S. case bearing No.2024ARP022 dated 05.03.2024 registered under Sections 448/326/427/506 read with Section 34 of the IPC at the instance of the informant Smt. Swapna Dey. Mr. Sankar Lodh, learned counsel, had appeared for these two accused persons in that case in an anticipatory bail application bearing No. AB 14 of 2024 before a Coordinate Bench of this Court on 16.04.2024. The said anticipatory bail application was disposed of on the same date directing the parties to appear before the learned Elaka Magistrate.

5. The FIR No.22 of 2024 at the instance of Smt. Swapna Dey, wife of Dilip Dey alleges that on 03.03.2024 at around 1.15 p.m. in the afternoon she along with her husband Sri Dilip Dey was at their house at Surja Sen Para,

Ushabazar. Their only son Biswajit Dey was not at home at that time since he had gone out in his auto rickshaw. At that time, the accused persons namely Rakesh Barman, the present accused, S/O. Late Madan Barman, aged 32 years and Debabrata Barman, aged 31 years, residents of Ushabazar, Chinaihani, P.S. Airport started calling her son loudly by name as "Partha" and then forcibly entered their house and assaulted her with pistol and sharp weapon and ransacked her house. They smashed all the things in her house. The accused persons together beat her and her husband severely asking as to where the boy was hidden. Her husband was taken to IGM Hospital for treatment. The accused persons left saying that "Partha" has been saved today but he will not be saved tomorrow. It is alleged that the accused persons were under the influence of alcohol. They also threatened that if the incidence is reported with the police, they will kill her and her husband and throw away the body. The instant FIR was instituted on 05.03.2024 at 1930 hours. The petitioner, therefore, objected to the engagement of Mr. Sankar Lodh, learned counsel, as a Special Public Prosecutor in Airport P.S. case No. 2024ARP037 instituted on 01.05.2024.

6. Learned Chief Judicial Magistrate, West Tripura, Agartala did not find any substance in such objection as according to him, Mr. Sankar Lodh, learned counsel, who appeared for the accused Rakesh Barman in AB No.14 of 2024 as defence counsel could not be said to have any relation with this case. The situation in the present case was completely different from the case referred. However, the learned CJM, West Tripura also proceeded to observe that for maintaining the confidence of the defence side and impartiality of this

Court since another Special Public Prosecutor learned senior counsel Mr. B.N. Majumder has been appointed by the Law Department, learned Court would prefer to hear learned senior counsel Mr. B.N. Majumder on any prayer made by the prosecution or defence regarding the accused Rakesh Barman, i.e. the present accused. The accused Rakesh Barman being aggrieved by rejection of his objection has preferred this petition under Section 482 of the Code of Criminal Procedure (Cr.P.C., for short).

7. Mr. Samrat Kar Bhowmik, learned senior counsel for the petitioner, has in support of the prayer adverted to both factual aspects and legal grounds. He has relied upon a number of decisions including those rendered by the Privy Council and the Court of Criminal Appeals of Tennessee at Knoxville. He has also placed reliance upon the Halsbury's Laws of England, Third and Fourth Edition, Volume 3 each, page-47 and page-626 respectively. The decisions on which he has relied upon are as under:

(i) ***Public Prosecutor, Andhra Pradesh vrs. Kothakapu Etreddy Venkata Reddi*** reported in ***AIR 1961 AP 105***;

(ii) ***Tajendra Chandra Dhar and others vrs. Tajendra Lal Ghosh and others*** reported in ***1939 SCC OnLine Rang 113***;

(iii) ***U Ko Ko Gyi vrs. U San Mya*** reported in ***1930 SCC OnLine Rang 28***;

(iv) ***Mary Lilian Hira Devi vrs. Kunwar Digbijai Singh*** reported in ***1917 AIR (PC) 80***;

(v) ***David Lloyd Neil vrs. Her Majesty The Queen*** reported in ***(2002) 3 R.C.S.***;

(vi) *State vrs. Phillips* reported in 672 S.W.2d 427 (Tenn. Crim. App. 1984).

8. The crux of the submission of learned senior counsel for the petitioner is that it is not the actual prejudice which the party or the accused has to demonstrate to the appearance of a counsel against his cause since a mere apprehension or likelihood of conflict of interest on account of his engagement and appearance in the previous case, i.e. Airport P.S. case No. 2024ARP022 is enough to justify his objection that the engagement of Mr. Sankar Lodh, learned counsel, as a Special Public Prosecutor for the State would be not only improper in the eye of law but also lead to conflict of interest in a cause of such serious nature where the present accused Rakesh Barman has been accused of the charge of murder. Relying upon the decisions rendered as above, it is submitted that the prior engagement of the counsel may not be in the same case but to an unrelated case. If Mr. Sankar Lodh, learned counsel, is allowed to appear as a Special Public Prosecutor on behalf of the prosecution, the confidential information that he has shared with his erstwhile counsel is likely to be prejudicial to his interest and may cause miscarriage of justice. Therefore, the impugned order may be set aside. Mr. Sankar Lodh, learned counsel, appointed as Special Public Prosecutor in Airport P.S. case No. 2024ARP037 may be prohibited from conducting the case on behalf of the prosecution against the present accused Rakesh Barman.

9. Mr. Raju Datta, learned Public Prosecutor, has filed affidavit and additional affidavit strongly controverting the allegations in order to dispel the charge of likelihood of bias against the appointment of Mr. Sankar Lodh,

learned counsel, as Special Public Prosecutor. The substance of his submission is that Airport P.S. case No. 2024ARP022 in which learned counsel Mr. Sankar Lodh appeared for the accused Rakesh Barman in an anticipatory bail application being A.B. No.14 of 2024 before this Court is totally unrelated to the present criminal case, i.e. Airport P.S. case No.2024ARP037. The informant in Airport P.S. case No.2024ARP022 is a lady. The offences alleged are under Sections 448/326/427/506 read with Section 34 of the IPC. The engagement of Mr. Sankar Lodh, learned counsel, came to be terminated on 16.04.2024 itself on disposal of the said anticipatory bail application being A.B. No.14 of 2024. The informant of Airport P.S. case No. 2024ARP022 is nowhere shown to be connected or related to the victim in Airport P.S. case No.2024ARP037. Airport P.S. case No.2024ARP037 has been instituted by S.I. Srikanta Guha on an information received about a cognizable offence of murder of Durga Prasanna Deb alias Biki on 30.04.2024 at 2025 hours. It cannot be said by any stretch of imagination that in such circumstances, there could be any possibility of conflict of interest on the appointment of Mr. Sankar Lodh, learned counsel, as Special Public Prosecutor in connection with Airport P.S. case No.2024ARP037 or that the case of the accused Rakesh Barman can be prejudiced. Therefore, learned CJM, West Tripura, Agartala has rightly rejected such objection.

10. Learned Public Prosecutor has also referred to his affidavit to point out that the present accused has been facing more than one cases such as, (i) West Agartala P.S. case No.2020 WAG 123 dated 10.08.2020 under Sections 457/354/427/395 of the IPC on the written complaint of one Amit

Ghosh, (ii) Airport P.S. case No.2021 ARP 001 dated 01.01.2021 under Sections 364A/34 of the IPC on the written complaint of one Sri Mrinal Kanti Deb, and (iii) Airport P.S. case No.2021 ARP 005 dated 08.01.2021 under Sections 387/506/34 of the IPC registered on the basis of a written complaint forwarded by the office of the District Magistrate & Collector, West Tripura filed by one Sri Nabalok Das. It is pointed out that in none of the above mentioned cases, Mr. Sankar Lodh, learned counsel, has ever appeared on behalf of the accused Rakesh Barman and is no way connected with the present case, i.e. Airport P.S. case No.2024 ARP 037. It is pointed out that charge-sheet has been submitted in the instant Airport P.S. case No.2024 ARP 037, but further investigation is underway. All these go to show that the apprehension of the petitioner is totally misplaced. Learned Public Prosecutor has, therefore, prayed that the present petition may be dismissed.

11. Mr. Sankar Lodh, respondent No.3 appearing in person, has made strong objection to the prayer. He has also filed an affidavit to traverse the assertions made in the criminal petition. He has also sought to distinguish the decisions relied upon by the learned senior counsel for the petitioner on the point that the common thread which flows out of all these decisions is that the engagement of a counsel may be improper on account of having appeared for other party in the same case but such engagement could also cause likelihood of apprehension of bias or conflict of interest if the litigation is either arising out of the previous case or is in relation to the subject matter of the previous case. It is submitted that in no case his engagement in an anticipatory bail matter on behalf of the same accused in connection with Airport P.S. case

No.2024 ARP 022 in A.B. No.14 of 2024 before this Court could possibly raise any likelihood of bias or conflict of interest on his engagement as a Special Public Prosecutor in Airport P.S. case No.2024 ARP 037. His engagement in the anticipatory bail matter came to be terminated on disposal of the application on 16.04.2024. Even in the wildest of imagination, it cannot be assumed that the learned counsel could have any connection or information in relation to a totally different incidence which occurred 15(fifteen) days thereafter with the victim party in both the cases being completely unrelated. If in such a situation, engagement of a counsel for a party in a matter subsequently which is totally unrelated and which does not either arise out of the previous litigation or is not the same litigation, could be said to be operating in the zone of conflict of interest to bar his engagement.

12. Mr. Sankar Lodh, learned counsel, has placed reliance upon the decision of the Orissa High Court in the case of ***State vrs. Lalit Mohan Nanda*** reported in ***AIR 1961 ORISSA 1*** and in the case of ***Mary Lilian Hira Devi vrs. Kunwar Digbijai Singh*** reported in ***1917 AIR (PC) 80***. Relying upon these decisions, he submits that it could only constitute an impropriety of a legal practitioner who has acted for one party in a dispute while acting for the other party in subsequent litigation between them if it is related to or arising out of that dispute. Such conduct may be open to misconception and is likely to raise suspicion in the mind of the original client and embitter the subsequent litigation. That would be concerning the honour of the profession. No such eventuality arises in the present case. Therefore, the apprehension of the

present petitioner is completely misplaced. He is only interested in protracting the criminal trial. Therefore, the petition may be dismissed.

13. I have heard learned counsel for the parties and the respondent No.3 in person at considerable length. I have also taken note of the materials placed from the record which have been referred to in some detail hereinabove. I have also perused the decisions relied upon and cited by the learned counsel for the rival parties and also respondent No.3 in person.

14. In the opinion of this Court, the inherent powers of this Court are to be exercised to prevent abuse of the process of any Court or otherwise to secure the ends of justice or if it is felt necessary to give effect to any order under this Code. Though the scope of the inherent jurisdiction of this Court under Section 482 of the Code is wide and quite unbridled but if the Court is of the opinion that the course adopted by the learned trial Court is not leading to cause any abuse of the process of the Court or is necessary to secure the ends of justice, it would refrain from exercising its jurisdiction.

15. In the facts of the present case noted above in conspicuous details, this Court finds that the apprehension of the petitioner as to likelihood of bias or conflict of interest on the part of the respondent No.3, Mr. Sankar Lodh, learned counsel, who has been appointed as a Special Public Prosecutor to conduct the case on behalf of the State prosecution in connection with Airport P.S. case No.2024ARP037 is misplaced. The engagement of the respondent No.3 by the petitioner in connection with an anticipatory bail matter arising out of Airport P.S. case No.2024ARP022 and its termination on 16.04.2024 by

disposal of the said anticipatory bail application by a Coordinate Bench of this Court cannot be said to have any plausible connection with the offence which was committed allegedly by the present accused Rakesh Barman and other accused persons on 30.04.2024. Not only are the victim and the parties of both the cases unrelated but the allegations made in both the FIRs do not show any semblance of those two matters being related or that the present Airport PS case 2024 ARP 037 is arising out of or is in connection with the previous one. Since the engagement of the respondent No.3 came to an end on 16.04.2024 itself, by stretching the imagination to the extreme logical extent also, it cannot be reasonably said that his appearance in an anticipatory bail matter in Airport P.S. case No.2024ARP022 did have a connection whether immediate or distant with the offence which got committed allegedly by the present accused Rakesh Barman and other accused persons on 30.04.2024 against a totally different set of parties.

16. Had it been a situation where the engagement of the respondent No.3 continued beyond 16.04.2024 and during the period of the incidence which led to the institution of the Airport P.S. case No.2024 ARP 037 on 30.04.2024 for the offence of murder under Sections 302/120B of the IPC read with Section 27 of the Arms Act, there could have been a likelihood of bias and conflict of interest in conducting a case simultaneously on behalf of the same accused person and appearing against him in the other case as a Special Public Prosecutor.

17. The two cases apparently having no connection as demonstrated above and there being no possibility of even a likelihood of bias or conflict of

interest, this Court is of the considered opinion that the impugned order if upheld would not lead to any abuse of the process of Court or miscarriage of justice. The learned Chief Judicial Magistrate, West Tripura, Agartala has duly applied his mind to the facts relevant for determination of the objection raised by the accused Rakesh Barman and rightly come to a conclusion that both the offences are totally unrelated and there is no possibility of any link in the engagement of the respondent No.3 in the previous case with his engagement as a Special Public Prosecutor in the instant Airport P.S. case No.2024 ARP 037.

18. Learned senior counsel for the petitioner has relied upon a number of decisions and also the relevant extracts of Halsbury's Laws of England in order to support his submission that the element of bias or likelihood of apprehension in a case like this also arises even if the engagement of the respondent No.3 was in a matter unrelated to the present one. In the case of ***Public Prosecutor, Andhra Pradesh Vs. Kothakapu Etreddy Venkata Reddi*** rendered by the Andhra Pradesh High Court, Sri Rama Rao, the Public Prosecutor, had advised in the capacity of the Public Prosecutor in the same case against the accused persons in which he later on appeared for some of the accused persons. In the facts of that case, the learned Court directed Sri Rama Rao not to appear for any of the accused in that case as well as to withdraw his appearance from that case. The facts of the said case is clearly distinguishable from the present case.

19. In ***Tajendra Chandra Dhar & Ors. Vs. Tajendra Lal Ghosh & Ors.*** decided by the learned Division Bench of Rangoon High Court, one Mr. Guha, learned advocate was found to be interested on behalf of the other side in

matters which were collateral to the suit in question and where he had put in a counter affidavit. In those circumstances, learned District Judge held that it would be improper to hear Mr. Guha as an advocate in that particular suit on behalf of one of the parties. The decision of the learned District Judge was upheld by the High Court. The said decision revolves around the facts of the case as Mr. Guha, learned advocate was found to be appearing in a collateral matter with the other side and had filed counter affidavit. The decision therefore does not apply on facts to the present case.

20. Learned senior counsel has relied upon another decision rendered by the Privy Council in *Mary Lilian Hira Devi Vs. Kunwar Digbijai Singh*. In the said case, both the Vakils had changed sides in a dispute relating to the property of the lady's husband. The High Court noted that since both the Vakils might be called upon as material witnesses they should refrain from acting in the case. The other advocate retired from the case but the appellant lady's advocate continued (earlier representing the respondent in the compromise). In those facts, the Privy Council agreed with the observations made by the High Court that it would be improper for a legal practitioner who has acted for one party in dispute such as this, acting for the other party in subsequent litigation between them relating to or arising out of that dispute. The present case is not one where the respondent No.3 has been engaged to appear in a matter relating to or arising out of the previous criminal case, i.e. Airport PS case No. 2024 ARP 022. In the said case, the engagement of the respondent No.3 had come to an end on disposal of the anticipatory bail application on 16.04.2024, i.e. 15 days before the incidence of murder of a different person leading to Airport PS case No. 2024 ARP 037 in which

respondent No.3 has been engaged. Therefore, the case of **Mary Lilian Hira Devi** does not apply to the facts of the present case.

21. Similarly in the case of **U Ko Ko Gyi Vs. U San Mya** decided by a Division Bench of the Rangoon High Court it was discovered that the advocate in question was already approached by the other heir to retain him if litigation arose in connection with the estate in question. The dispute was surrounding the partition of the estate of the deceased where the wife of the appellant was one of the parties. It was found that the advocate had knowledge of all the facts pertinent to the case of this person but still he chose to appear for the opposite party fighting against the wife of the respondent who had disclosed her case with detailed information. The learned court though observed that there was no direct link/proof of any confidential information having passed, but based on a fair presumption relating to the fact that some communication did pass from the respondent to the appellant, the court upheld the decision of the District Judge and dismissed the application. The case of **U Ko Ko Gyi** therefore also relates to engagement of a counsel in a matter relating to or arising out of the same dispute which is not the case here.

22. In the case of **David Lloyd Neil Vs. Her Majesty the Queen** the accused sought stay of criminal prosecution. The learned court held that a lawyer may not represent one client whose interests are directly adverse to the immediate interest of another current client. Even if the two mandates are unrelated, unless both clients consent after receiving the full disclosure and the lawyer reasonably believes that he or she is able to represent each client without adversely affecting the other then only he should appear for one of them. The principle which follows from the aforesaid decision is that if the

interest of one client could be directly adverse to the immediate interest of another client, then the learned lawyer should avoid representing his current client to avoid conflict in interest. No such situation arises in the facts of the present case. As such, the said decision is also not on the point in issue.

23. In the case of ***State Vs Phillips*** decided by the Tennessee Court the issue related to a plea raised by the accused in a murder case of denial of effective assistance of counsel on account of the fact that his former defense counsel was acting on behalf of the State. The court in those circumstances held that the right of the defendant to fair and impartial trial and due process of law and the orderly administration of justice would be affected. Therefore, the conviction of the accused was reversed and the matter was remanded for fresh trial while the District Attorney General was disqualified.

24. In the present case, it is not a fact that the respondent No.3 was appearing as his defence counsel in the same case and now being engaged to appear on behalf of the State. The common thread which flows out of these decisions is that it is not necessary for the accused to show actual prejudice but a likelihood of conflict of interest would in itself be enough to preclude an advocate from appearing for the opposite party since an advocate is required to maintain the highest traditions of the bar. The facts and circumstances of the present case, as discussed hereinbefore, do not show that the present case, i.e. 2024 ARP 037 arose out of the previous FIR or had any connection or relation with 2024 ARP 022 in which the respondent No.3 had appeared for the accused Rakesh Barman in an anticipatory bail matter and that his engagement had come to an end upon disposal of that anticipatory bail application on 16.04.2024, i.e. 15 days before the present incidence took place. The parties of

both the FIRs are unrelated. As such, it cannot be said that the accused could have passed any confidential information to his lawyer, respondent No. 3 then, which could preclude him to represent the state in the present FIR on the grounds of conflict of interest or impropriety. Therefore, this Court is of the opinion that the decisions relied upon on behalf of the petitioner do not apply to the facts and circumstances of the present case.

25. This Court, therefore, does not find any reason to interfere in the impugned order. The instant petition is accordingly dismissed.

Pending application(s), if any, also stands disposed of.

(APARESH KUMAR SINGH), CJ

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