



Serial No.22
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl. Petn. No. 24 of 2025

Date of Order: 27.10.2025

Shri. Enistar Rani
S/o (L) K. Kharngi
R/o Madanbitaw, Mawngap,
East Khasi Hills District,
Meghalaya-793121.

Vs. 1. State of Meghalaya represented
by the Secretary, Home Department
Government of Meghalaya.

2. State of Meghalaya represented
By the Secretary, Department of
Law, Government of Meghalaya.

3. Superintendent of Police, East
Khasi Hills District, Meghalaya.

4. Officer-in-Charge Mawngap
Police Station East Khasi Hills
District, Meghalaya.

5. Smti. L. Kharjana
WPSI, Investing Officer.

.....Petitioner.

.....Respondents.

Coram:

Hon'ble Mr. Justice B. Bhattacharjee, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. N. Khera, Adv.

For the Respondent(s) : Mr. N. Syngkon, Assistant PP.
Mr. J. N. Rynjah, GA.

**ORAL:-**

Heard Mr. N. Khera, learned Counsel appearing for the petitioner and Mr. N. Syngkon, learned Asst. PP. appearing for the State-respondents.

By this application, a challenge has been made by the petitioner to the order dated 30-10-2024 passed by the learned Special Judge (POCSO) East Khasi Hills, Shillong in Special POCSO Case No. 4 of 2018 whereby the learned Trial Court allowed the prosecution to recall the survivor to depose before the Court.

The brief fact of the case, shorn of unnecessary details, is that the petitioner has been put to face trial as an accused in Special POCSO Case No. 4 of 2018 under Section 3(a) 4 of the POCSO Act, 2012. In the course of the trial, the survivor was examined as prosecution witness on 18-07-2022 and discharged. However, before the recording of the statement of the petitioner under Section 313 Cr.PC, the prosecution filed an application dated 08-09-2022 seeking recalling of the survivor. The petitioner filed an objection against the prayer by filing an objection dated 04-01-2023. The learned Special Judge after hearing the parties and on perusal of the material on record passed the impugned order dated 30-10-2024 allowing the application for recalling the survivor. Being aggrieved, the petitioner has come up with the present application before this Court challenging the impugned order.

Mr. N. Khera, learned Counsel for the petitioner submits that the learned Trial Court has failed to appreciate the basic principle of law with regard to recalling of the witness and erroneously pass the impugned order. He submits that a witness in a criminal case can be recalled on a very limited ground only for the purpose of ensuring justice with the case and not for the purpose of allowing the prosecution to improve its case. The learned



Counsel further submits that though the Trial Court has ample power to recall a witness, the power cannot be exercised arbitrarily without assigning any reason. He submits that no reason has been assigned by the Trial Court in the impugned order dated 30-10-2024 for allowing the prayer for recalling of the survivor. Placing reliance on a decision of the Apex Court in the *State (NCT of Delhi) Versus Shiv Kumar Yadav and Another, (2016) 2 SCC 402*, the learned Counsel contends that law mandates that power to recall may be exercised only when there is valid reason for doing so and the impugned order, having been passed without any justification or valid reason cannot be sustained in law and is liable to be interfered with. He, therefore, prays that the impugned order be set aside and quashed.

Mr. N. Syngkon, learned Asst. PP, on the other hand, submits that the impugned order does not suffer from any illegality or infirmity requiring interference by this Court. He submits that the recalling of the survivor is necessitated to ensure the determination of truth and also for just and proper conclusion of the trial. He submits that the prosecution in its application has cited valid reason for recalling of the survivor and the learned Trial Court has taken note of the same while passing the impugned order dated 30-10-2024. The learned Asst. PP submits that the survivor, who has been victimized in more than one case involving offences under the POCSO Act, was not in a proper mental state and during the time of recording of her evidence in the trial, she was utterly confused as two cases of similar nature were pending. He submits that due to such mental condition, the survivor narrated the incident which was totally unrelated to the Special (POCSO) Case No. 4 of 2018 and was based on the fact of another case which is pending against a different accused person. He submits that the recalling of the survivor is aimed at helping the Trial Court to judge the accuracy of the



allegation and to come to a correct conclusion and, thus, is very essential for ensuring ends of justice. In support of his contention, the learned Asst. PP places reliance on a decision of this Court in *Shri. Niatsingh Wanniang Vs. State of Meghalaya & Anr.* in *Crl. Petn. No. 5 of 2024* and submits that the recalling of the survivor will not prejudice the petitioner in any manner. He, therefore, submits that there is no merit in the present application and the same is liable to be dismissed.

Considered the submission made by the rival counsels appearing for the parties and also perused the materials on record. It appears that an application under Section 311 Cr.PC was filed by the prosecution for recalling the survivor who was examined as PW- 2 in the case. The ground taken in the application was that the survivor due to her mental disturbance got confused and instead of narrating the incident in connection with the case in which she was called as witness, narrated the fact of another case where the petitioner is not an accused.

There is no dispute to the fact that the survivor is a victim of two different cases involving offences under the POCSO Act, 2012 and is cited as prosecution witness in both the cases pending trial. The decision of *State (NCT of Delhi) (supra)* cited by the petitioner lays down that the plea for recalling of witness has to be *bona-fide* and for advancing justice. It is also provided therein that fairness of trial has to be seen not only from the point of view of the accused but also from the point of view of the victim and the society. The object of provision of recall is to reserve the power with the Court to implement justice in the conduct of the trial at any stage. The power available with the Court, therefore, must be exercised for valid reasons for ensuring ends of justice.



The learned Counsel for the petitioner may be correct in contending that no reason has been recorded by the Trial Court in the operative part of the impugned order, but it is clear from the middle part of the order that the reason cited by the prosecution seeking recalling of the survivor has been recorded in details. There is specific mention of the grounds basing on which the recalling of the survivor was sought for by the prosecution and the fact that the survivor is a victim of more than one such offence for which connected criminal cases are pending. As there is no dispute to the aforesaid fact by the petitioner, this Court does not find that the impugned order was passed without there being any valid reason or ground. The reflection of the grounds cited by the prosecution in the order dated 30-10-2024 would undoubtedly show that the learned Trial Court was well-aware of the basis on which the recalling of the survivor was sought for. There is also no denial by the petitioner that the deposition of the survivor as to the allegation made in the POCSO Case No. 4 of 2018 would be of utmost relevance for the purpose of determination of truth in the matter. Nothing has been pointed out to show that the petitioner will be prejudiced by recalling of the survivor. Hence, this Court is not inclined to interfere with the impugned order.

In view of the discussion made above, this revision petition is devoid of merit and is hereby dismissed.

Judge

Meghalaya
27.10.2025
"Biswarup PS"