



Serial No. 07
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl.Rev.P. No.15 of 2023

Date of Order: 03.02.2026

Shri. Shngain Lamare, 39 years
Son of Late Brin Chyrmang,
Resident of Umkyrpong Village,
East Jaintia Hills District,
Khliehriat, Meghalaya.

.....Petitioner

-VERSUS-

The State of Meghalaya,
Represented by its Public Prosecutor

.....Respondent

Coram:

Hon'ble Mr. Justice B. Bhattacharjee, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. P. Bora, Sr.Adv with
Ms. K. Decruse, Adv

For the Respondent(s) : Mr. K.P. Bhattacharjee, GA

JUDGMENT (Oral)

1. Heard Mr. P. Bora, learned Senior counsel assisted by Ms. K. Decruse, learned counsel appearing for the petitioner and Mr. K.P. Bhattacharjee, learned GA appearing for the State-respondent.

2. This revision petition has been preferred by the petitioner against the impugned order dated 20.06.2023 passed in Misc.Case No.60 of 2022 arising out of Sessions Case No.2 of 2015 u/s 302/34 IPC, whereby the prayer of the petitioner for recalling the prosecution witnesses PW-1,



PW-2, PW-3 and PW-5 was rejected with a cost of Rs.10,000/-.

3. The petitioner, who is an accused in Sessions Case No.2 of 2015, filed an application before the Trial Court u/s 311 CrPC on 12.09.2022 registered as Misc.Case No.60 of 2022 seeking recalling of the prosecution witnesses namely, Smti. Ribhamiki Salahe (PW-1), Smti. Kylluidki Salahe (PW-2), Shri. Suk Lyngdoh (PW-3) and Shri. Praiwess Salahe (PW-5) for cross-examination. The prosecution filed a show cause/objection to the said application. The application was heard on 07.03.2023 and the learned Sessions Judge by order dated 20.06.2023 rejected the prayer by holding that the petitioner had chosen to repeatedly exert his right which amounted to abuse of the process of the Court. Being aggrieved, the petitioner has preferred this revision petition before this Court.

4. The learned Senior counsel appearing for the petitioner, in his submission elaborated the fact of the case that pursuant to the lodging of the FIR dated 26.05.2014, the petitioner had surrendered before the ADM, Khliehriat Court on 26.06.2014. On 24.09.2014, the petitioner completed 90 days of detention but, still continued to remain in custody. The charge-sheet in the case was submitted on 10.11.2024. PW-1 was examined and discharged on 10.09.2015, PW-2 and PW-3 were examined and discharged on 14.09.2015 and PW-5 was examined and discharged 28.09.2015. Thereafter, the petitioner's statement u/s 313 CrPC was recorded on 29.08.2016. On 21.04.2020, the petitioner was granted bail by the High Court and on 24.04.2020 he was released from judicial custody. The learned Senior counsel submits that the petitioner has taken a plea of alibi in his defense and for that purpose recalling of PW-1, PW-2, PW-3 and PW-5 is absolutely necessary. He submits that the petitioner is ready to bear the cost of recalling and re-examination of the said witnesses. He also submits that the defense intends to put only few



questions to the said witnesses on their recall which is not likely to cause any harassment and inconvenience and will also not result in any delay of the proceedings. By placing reliance on the case of *Varsha Garg v. State of Madhya Pradesh & ors*, (2023) 19 SCC 646, the learned Senior counsel submits that the prayer of the petitioner for recalling the witnesses should not be refused as the right of the accused to a fair trial is constitutionally protected under Article 21 of the Constitution of India. It is therefore, prayed that the impugned order dated 20.06.2023 be set aside and quashed and necessary directions may be passed allowing recalling of the witnesses.

5. The learned GA, on the other hand, opposes the contentions raised on behalf of the petitioner and submits that there is nothing wrong in the order passed by the learned Sessions Judge rejecting the prayer for recalling as the application filed by the petitioner was nothing but an abuse of process of law. He submits that, on an earlier occasion also, the petitioner had filed an application for recalling some of the prosecution witnesses including PW-1 and PW-2, which was rejected by order dated 23.01.2020. The petitioner did not challenge the said order dated 23.01.2020, instead filed a fresh application in total abuse of process of law. He submits that recalling of the witnesses, at this stage, is totally unjustified and would not serve any purpose as the witnesses sought to be recalled were examined and discharged long back in the year 2015 and the petitioner's statement u/s 313 CrPC was recorded as far back as on 29.08.2016. He further submits that the defense witnesses adduced by the petitioner was closed on 21.12.2021 and hence, the prayer for recalling of the prosecution witnesses is aimed at stalling the proceedings. The learned GA has also taken this Court to the details of the facts recorded by the Sessions Judge in justifying his order and submits that in the backdrop of the said facts, it is clear that filing of the application for



recalling is not aimed at serving justice. He, therefore, submits that there is no merit in the present case and the revision petition is liable to be dismissed.

6. Heard submissions advanced on behalf of the rival parties and also perused the materials on record. As the question of recalling of witness in exercise of power u/s 311 CrPC primarily vests on the discretion of the Trial Court, it is imperative for this Court to first take into consideration the details of the reasoning recorded in the impugned order dated 20.06.2023 by the learned Sessions Judge while rejecting the prayer for recalling made by the petitioner.

7. The facts recorded by the learned Sessions Judge, which are not sought to be disputed by the petitioner before this Court, reveals that 24 prosecution witnesses were examined during the course of the trial and the statement of the petitioner u/s 313 CrPC was recorded on 29.08.2016. The petitioner, thereafter, was given an opportunity to adduce defence witness. On the failure of the petitioner to bring any defence witness, the opportunity was closed vide order dated 18.09.2017 and the matter was posted for final argument. On 26.07.2019, the petitioner filed Crl.Misc.Application No.9 of 2019 before the trial Court seeking recalling of PW-1, Pw-2, PW-16, PW-20 and PW-22 and on the same date filed another Crl.Misc.Application No.8/2019 praying for summoning additional defense witnesses, without disclosing the fact that the opportunity was closed by order dated 18.09.2017. The application for summoning additional defense witnesses was allowed, however, the application seeking recalling of PW-1, Pw-2, PW-16, PW-20 and PW-22 was rejected by the trial Court by common order dated 23.01.2020. The order of rejection attained finality as the same was not challenged before any higher forum.

8. It transpires from the record that PW-1 was examined and



discharged on 10.09.2015, PW-2 and PW-3 were examined and discharged on 14.09.2015 and PW-5 was examined and discharged 28.09.2015. There is nothing on record to justify as to why it took 7 (seven) years for the petitioner for filing Misc.Case No.60 of 2022 seeking recalling of the said witnesses. Moreover, the order dated 20.06.2023 reveals that Misc.Case No.60 of 2022 was preferred on the same ground basing on which Crl.Misc.Application No.9 of 2019 was filed. The petitioner has failed to assign any fresh or new ground for filing the successive application. It is also not the case of the petitioner that he was not provided effective legal assistance during the course of the trial. In fact, it appears that he was represented by a counsel of his choice and the counsel who filed the Crl.Misc.Application No.9 of 2019 has also filed the Misc.Case No.60 of 2022. The prayer of the petitioner, as such, appears to be frivolous and vexatious.

9. The plea of alibi taken at the trial by an accused essentially requires to be proved by adducing defence witness. However, there is no law which debars an accused from establishing his plea of alibi from the evidence of prosecution witness; but after entering defense, if the accused fails to establish his plea, he cannot, as a matter of right, revert to the prosecution witness seeking re-examination. The record reveals that the petitioner, in the instant case, was given an opportunity to establish his defense and 2 defence witnesses were examined on 06.02.2020 and 04.08.2020. Further, there is no cogent explanation by the petitioner for the delay in filing the fresh application seeking recall of witnesses, particularly, after significant progress of the trial. In the above situation, it is clear that the subsequent application for the same witnesses without fresh ground after prior rejection is also not aimed at advancing the cause of justice.

10. The learned Sessions Judge, while passing the order dated



20.06.2023 has taken into consideration the proposition of law laid down by the Apex Court in *Varsha Garg (supra)* and *UT of Dadra and Haveli & ors v. Fatih Sinh and Mohon Singh Chauhan (2006) 7 SCC 529*. The learned Senior counsel in his argument has not pointed out any illegality or infirmity in the recording of the fact and the reasoning of the learned Sessions Judge. Although, reliance was placed on the decision of *Varsha Garg (supra)* on behalf of the petitioner before this Court, nothing was pointed out to project that the impugned order was passed in utter disregard of the proposition of law laid down therein.

11. In view of the discussion made above, the petitioner has failed to make out a case for interference by this Court in exercise of its revisional jurisdiction. The petition, as such, is devoid of merit and accordingly stands dismissed.

Judge

Meghalaya
03.02.2026
"Shrity,PS"