

**HIGH COURT OF TRIPURA
AGARTALA**

CRL.REV.P. NO.21 OF 2012

- 1. Md. Billal Miah,**
S/o Md. Nidhan Miah of
Village –Purba Chandigarh,
P.S. Melaghar, District- West Tripura,
At present Sepahijala.
- 2. Sri Rabindra Tripura @ Sunil Tripura,**
S/o Late Rajmani Tripura of
Vill & P.O. Kalaban,
P.S. R.K.Pur,
District- South Tripura, at present Gomati.

.... Petitioners.

-- Vrs --

The State of Tripura,
Represented by the Secretary,
Home Department,
Government of Tripura,
Agartala.

.... Respondent.

**BEFORE
THE HON'BLE MR. JUSTICE S.C. DAS**

For the Petitioners : Mr. M.K. Roy, Advocate.

For the Respondent : Mr. R. C. Debnath, Addl. P.P.

Date of hearing : 10.03.2015.

Date of delivery of Judgment & order. : 23 .03.2015.

Whether fit for reporting : **No**

JUDGMENT & ORDER

This revisional application under Section 397 read with Section 401 of Cr.P.C. is directed against the judgment

and order of conviction and sentence, dated 14.03.2012, passed by learned Sessions Judge, South Tripura, Udaipur (now Gomati) in Criminal Appeal No.34(4) of 2011, where-under the judgment and order of conviction and sentence, dated 30.09.2011, passed by learned Chief Judicial Magistrate, South Tripura, Udaipur in Case No.CR 572 of 2007 (F) under Section 41 of the Indian Forest Act read with Rule 13 of the Tripura Forest Transit Rules convicting the accused-petitioners Billal Miah and Rabindra Tripura alias Sunil Tripura and another Litan Miah and sentencing them to suffer simple imprisonment for 3(three) months and to pay a fine of Rs.500/- in default of payment to suffer further simple imprisonment for 15 days, has been upheld.

2. Heard learned counsel Mr. M.K.Roy for the petitioners and learned Addl. P.P., Mr. R.C. Debnath for the State-respondent.

3. The brief fact of the case is that one Sujit Chakma, Forester (O.C.) of G.R.F.P.P., Banduwar on 27.07.2007 filed a written complaint before the learned Chief Judicial Magistrate, South Tripura, Udaipur against the accused-petitioners Billal Miah and Rabindra Tripura and another Litan Miah alleging that on the intervening night of 26.07.2007 and 27.07.2007 based on secret information they detained a vehicle bearing No. TR01-D-1937 which was carrying illegally collected timber and

the vehicle with timber along with the accused petitioners and another Litan Miah were detained. Some other miscreants fled away. The vehicle and timber were seized and complaint was filed for commission of offence punishable under Section 41 of the Indian Forest Act read with Section 13 of the Tripura Forest Transit Rules.

4. Cognizance was taken on the basis of the complaint and in due course, learned Chief Judicial Magistrate examined the accused-petitioners and another Litan Miah under Section 251 of Cr.P.C. for committing offence punishable under Section 41 of the Indian Forest Act read with Rule 13 of the Tripura Forest Transit Rules to which they pleaded not guilty and claimed to be tried.

5. In course of trial, the complainant Sujit Chakma examined himself as P.W.1 and produced two other witnesses as mentioned in the complaint and they were examined as P.W.2 Sri Bijoy Dey and P.W.3 Sri Indra Basi Jamatia.

6. After closure of the prosecution evidence, accused persons were examined under Section 313, Cr.P.C. and in their turn, they declined to adduce any defence evidence.

7. At the conclusion of trial, learned Chief Judicial Magistrate found the accused persons guilty of the offence as

alleged and accordingly convicted and sentenced them as stated hereinbefore.

8. Felt aggrieved, the accused-petitioners preferred Criminal Appeal No.34(4) of 2011 before the learned Sessions Judge and by impugned judgment dated 14.03.2012 learned Sessions Judge dismissed the appeal and upheld the judgment and order of conviction and sentence passed by the learned trial Court. Hence, this revisional application.

9. Learned counsel Mr. Roy at the very outset pointed out some serious infirmities and submitted that the judgment and order of conviction and sentence cannot stand and it is liable to be set aside.

10. The first contention of Mr. Roy is that the trial Court in Para 9 at page 9 of the judgment has held accused Billal Miah and Litan Miah as guilty but in the next paragraph convicted three accused persons i.e. Billal Miah, Litan Miah and Rabindra Tripura alias Sunil Tripura. So, the finding of learned trial Judge is liable to be interfered. He has also submitted that the learned Sessions Judge also did not apply his mind and mechanically upheld the judgment and order of conviction and sentence. The concluding two sub-paragraphs of paragraph 9 at page 9 of the judgment of the trial Court reads as follows:-

“In view of the above discussion and observation therein, I am of the view that the prosecution has successfully proved the offence as labeled against the accused persons and so, I find guilty both the accused persons namely Md. Billal Miah and Litan Miah and as such they are liable to be convicted.

In the aforesaid premises, I convict the accused persons namely Md. Billal Miah, S/o Nidhan Miah of Village Purba Chandigarh under Melagarh P.S., West Tripura District; Litan Miah, aged about 28 years, S/o Late Ahid Miah Majumder of Village Kulubari under Sonamura P.S., West Tripura District and accused Rabindra Tripura @ Sunil Tripura, aged about 28 years, S/o Rajmani Tripura of Village Kalaban under R.K. Pur P.S., Udaipur, South Tripura for the commission of the offence punishable under Sec.41 of the Indian Forest Act 1927 read with Rule 13 of the Tripura Forest Transit Rules. Accordingly, they are taken into custody.

The sureties of the convicts are discharged from the liability of their bail bond.”

11. A bare reading of the above makes it clear that the learned Chief Judicial Magistrate found the accused Billal Miah and Litan Miah guilty of the offence but while giving conviction, he has included Rabindra Tripura alias Sunil Tripura also. This may be an error but the appellate Court while considering the appeal would notice it and correct the error applying the provisions of Section 362 of Cr.P.C. This is an infirmity apparent on the face of the record. The trial Court and the appellate Court would remain careful while passing the judgment and it is expected that they should correctly reflect, in the finding, regarding the person who was found guilty and while convicting them for the offence charged.

12. The next infirmity pointed out by learned counsel Mr. Roy is that the trial Court taken into consideration the evidence of P.W.3 Sri Indra Basi Jamatia but the evidence of the witness was not signed by the learned Chief Judicial Magistrate certifying that it was typed to his dictation or that it was read over and explained to the witness and the witness admitted it to be correct.

13. Learned Addl. P.P. has submitted that the submission of Mr. Roy, learned counsel, is correct and the evidence of P.W.3 should not have been taken into consideration since it was not signed by the learned Magistrate.

14. On perusal of the L.C. record at page 44 and 45, I find the deposition of P.W.3 Indra Basi Jamatia. It was recorded on 13.08.2010. Order dated 13.08.2010 shows that learned A.P.P. was present with three witnesses. It is not specifically mentioned in the order sheet that Indra Basi Jamatia was one of the witnesses. However, the deposition sheet was signed by Sri Indra Basi Jamatia. It is correctly pointed out by learned counsel Mr. Roy that the deposition sheet has not been certified by learned Chief Judicial Magistrate that it was typed to his dictation or that it was read over and explained to the witness and the witness admitted it

to be correct. Practically it was not signed by the learned Magistrate. It is quite surprising that the learned Chief Judicial Magistrate Mr. G. Sarkar himself recorded the statements of the witness and he passed the judgment. So, he was supposed to go through the evidence recorded during trial while passing the judgment. Had it been so, it would definitely attract him that he had not signed the deposition sheet. This is a serious infirmity and a serious negligent on the part of the trial Court. The appellate Court though noticed it, but taken no attempt to rectify the wrong.

15. The 3rd and serious infirmity pointed out by Mr. Roy is that the accused-petitioner Rabindra Tripura alias Sunil Tripura was not examined under Section 313, Cr.P.C. and so the judgment and order of conviction and sentence cannot stand in the eye of law.

16. Learned Addl. P.P. has conceded the argument of learned counsel Mr. Roy and has submitted that it was a negligence on the part of the learned trial Judge which is ignored by the learned Sessions Judge.

17. On perusal of the L.C. records I find that the accused Billal Miah and Litan Miah were examined under Section 313 Cr.P.C. and their signatures were obtained. On 12.09.2011 a memorandum of examination in the name of

Rabindra Tripura was prepared and his signature was not obtained in the memorandum of examination whereas the signature of accused Litan Miah was obtained on that document. There are lots of over writings in respect of his father's name, caste, P.S. etc. in the examination sheet. It is, therefore, clear that Rabindra Tripura was not examined under Section 313, Cr.P.C. as per the procedure prescribed by law and so, the judgment and order of conviction and sentence passed by the trial Court and affirmed by the appellate Court cannot stand in the eye of law.

18. Learned counsel Mr. Roy referred several other infirmities in the judgment which at this stage, I do not like to point out since I think it is a fit case to set aside the judgment for all those above discussed infirmities and to remand it back to the trial Court for examining P.W.3 afresh and then to pass a judgment according to law.

19. Accordingly, the judgment and order of conviction and sentence dated 14.03.2012 passed by learned Sessions Judge in Criminal Appeal No.34(4) of 2011 and the judgment and order of conviction and sentence dated 30.09.2011, passed by learned Chief Judicial Magistrate, in case No. CR 572 of 2007(F) are set aside and quashed.

20. Send back the L.C. records along with a copy of this judgment.

21. Before parting with the case record, I think it appropriate to caution Sri G. Sarkar, Chief Judicial Magistrate for his apparent and total negligence in dealing with the case.

22. Registry is directed to send a copy of this judgment to Sri G. Sarkar, the then Chief Judicial Magistrate, South Tripura, Udaipur and Sri G. Debnath, the then Sessions Judge, South Tripura, Udaipur for their taking note of the fact and to remain careful in future.

JUDGE