

THE HIGH COURT OF TRIPURA
AGARTALA

CRL.PETN. 32 OF 2015

Sri Rajib Debnath,
S/O. Sri Motilal Debnath,
Resident of Vill. Naraura,
P.O. & P.S.: Bishalgarh,
District: Sipahijala, Tripura,
Pin: 799102.

..... **Petitioner (Accused Person).**

- V e r s u s -

1. The State of Tripura.
2. Sri Santosh Karmakar,
S/O: Sri Sukumar Karmakar,
Additional District Magistrate & Collector,
Khowai, Tripura.

..... **Respondents.**

BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

For the petitioner	: Mr. P.K. Biswas, Sr. Advocate, Mr. S. Kar Bhowmik, Advocate, Mr. S. Roy, Advocate, Mr. P. Majumder, Advocate, Ms. C. Bhowmik, Advocate.
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For the respondents	: Mr. A. Ghosh, P.P.
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Date of hearing and delivery of judgment and order.	: 11.08.2015.
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Whether fit for reporting	: YES.
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JUDGMENT & ORDER (ORAL)

By means of this petition, the petitioner has prayed for
transfer of case No.S.T.14(WT/K)2012 from the Court of learned

Additional Sessions Judge, Khowai, West Tripura to any other Court of competent jurisdiction.

2. At this stage, it would be pertinent to notice the background leading to the filing of the petition. On the administrative side, it had come to the notice of the Chief Justice that in this case, the statement of PW-1 had taken almost two years to be recorded and that the case was being adjourned time and again without any rhyme or reason. It was brought to the notice of the Court in those proceedings on the administrative side that one of the accused was the Additional District Magistrate, Khowai and, therefore, the Judge was not proceeding with the matter. Thereafter, on the administrative side, this Court had directed the Additional District and Sessions Judge, Khowai to complete the hearing of the trial by 31.8.2015. Thereafter, the Additional Sessions Judge preponed the hearing of the case from 31.7.2015, the date it was already fixed and fixed a fresh calendar commencing from 21.7.2015.

3. The petitioner herein who is one of the accused in the case filed **CRL.PETN. 26 of 2015** titled "***Sri Rajib Debnath vs. The State of Tripura***" in this Court challenging the preponement of the case and therein this Court held as follows:-

"3. While reviewing all the criminal trials being conducted in the State of Tripura, I found that in this case one of the accused was the ADM, Khowai and he is presently posted there. The charge in the case was framed against him and the present petitioner who is the co-accused on 19.5.2012. This matter has been

continuing for more than three years but even the statement of PW-1 has not been recorded completely. More than 25 dates have been granted for examination-in-chief. Mr. Kar Bhowmik is right that his client has only prayed for a date on one occasion and in all other occasions the date was either sought for by the prosecution or on behalf of the accused No.1.

4. This Court cannot shut its eyes to the fact that the main accused is a senior official posted in the same station in which the trial is going on. This obviously is leading to delay of the trial and, therefore, I (Chief Justice on the administrative side) after reviewing the matter had directed the Additional District & Sessions Judge to complete the hearing of the trial by 31.8.2015. It is pointed out that there are a lot of witnesses and the cross-examination of PW1 may take a lot of time. Therefore, the order of the learned trial Court is modified as follows:-

The preponement to 21.7.2015 is upheld. However, it is ordered that only cross-examination of PW-1 shall be conducted from 21.7.2015 on day to day basis till it is complete. Thereafter, the trial Court shall fix the calendar for examination of the remaining witnesses after 16.8.2015 and the other witnesses shall be examined as per the calendar fixed. The time for disposing of the case keeping in view the number of witnesses is extended up to 30.11.2015.

5. I am prima facie of the view that the Additional Public Prosecutor has been unnecessarily asking for dates in this case. Therefore, a copy of this order shall be sent by the Registrar General to the Secretary, Law who shall ensure that the Public Prosecutor is present on all the dates and shall ensure that examination and cross-examination of the witnesses is done as per the calendar to be now fixed by the trial Court. The trial Court shall take care to ensure that trial of other cases is not affected by the fixing of this case and he shall also ensure that no other case is adjourned

merely because this case is taken up. If need be, the trial Court will sit 2/3 hours extra everyday but shall ensure that no witnesses are sent back unexamined.

6. The State may also look into the aspect whether this ADM should continue at Khowai during the pendency of this trial or should be transferred to some other station.”

4. It is not clear what action has been taken by the Secretary, Law pursuant to the directions given in para-5 and, therefore, the Registrar General shall send a reminder to the Secretary, Law and shall also place the same on the administrative side before this Court. The petitioner has expressed an apprehension that the ADM may influence the witnesses. Earlier also on the administrative side I had noted that on almost all the dates it is the ADM and the Assistant Public Prosecutor who had sought adjournments. Therefore, the District Magistrate, Khowai is directed to ensure that the ADM is not given any work of such a nature that he has any administrative control over the witnesses cited in this case. The Registrar General shall send a copy of this order to the District Magistrate, Khowai by fax within 24 hours to ensure compliance thereof.

5. As far as this case is concerned, the cross-examination of the witness was to be held on 21.7.2015. On that date, the present petitioner filed a petition with a prayer to call the Receipt registrar and Peon Book for the period from 2003 to 2004 from the office of the BDO, Teliamura R.D. Block. As noted by me earlier, the examination of this witness was recorded over 25 dates and if

the counsel wanted certain documents, then even before the witness came to Court, an application should normally have been moved to the Court stating that these documents be summoned for cross-examining the witness. The practice of filing such an application at the stage when the witness has already appeared, that too in a case where the calendar has been fixed pursuant to the directions of the High Court cannot be appreciated. Even in the earlier petition filed before this Court, it was never mentioned that some documents are required, otherwise this Court could have well directed that those documents shall be produced when the witness is called. Thereafter, on 21.7.2015 cross-examination of the witness (PW-1) started and the learned trial Court with regard to the application filed ordered as follows:-

“ xxx xxx xxx

*Necessary order on the petition of the
learned counsel of the accused Rajib Debnath be passed
after recording the evidence of the prosecution. xxxx”*

6. This part of the order cannot be appreciated. An order on this application should have been passed by the Court then and there. He should have either rejected the application or he should have allowed the application. There is no purpose of keeping such an application pending till the end of the examination of all the prosecution witnesses and to this extent I agree with learned Counsel for the petitioner that this portion of the order dated 21.7.2015 is incorrect.

7. Thereafter, the cross-examination of PW-1 continued and I find that the cross-examination is quite lengthy. During cross-examination, the counsel for the petitioner drew the attention of the witness to copies of certain letters which were received by the office of the BDO, Teliamura. The learned trial Court did not permit the counsel for the petitioner to confront the petitioner with these documents. The counsel for the petitioner then filed a handwritten application under Section 137 of the Evidence Act drawing the attention of the Court to the fact that in cross-examination the party cross-examining was free to confront the witnesses even with documents which are not on the Court file. Thereafter on 22.7.2015, the learned trial Court passed an order, relevant portion of which reads as follows:-

“ xxx xxx xxx

At the beginning of further cross examination of P.W.1, Learned Counsel Mr. S. Kar Bhowmik has drawn attention of the witness to a letter from his custody. This court requested learned counsel Mr. S. Kar Bhowmik to submit the said document and other documents in his possession before this court which are required to be used as evidence by the accused Rajib Deb Nath and attention of the present witness be drawn but Learned Counsel Mr. Kar Bhowmik has submitted that he will submit those documents at the time of giving Dws and not at this stage. This court also requested him to submit those documents before the court which he relies on and desires to draw attention of PW-1 at the time of his cross examination otherwise, this court will not allow him to draw attention of P.W.1 on the said documents.

Learned counsel Mr.Kar Bhowmik submitted that unless he is allowed to draw attention of the documents without production the same to the court then he will

not further cross-examine P.W.1. Thereafter a petition is filed by the accused Rajib Debnath.

xxx xxx xxx

In my considered view that the documents on which the accused relied on for his defence case and desires to draw attention of the present witness(P.W.1) are required to be submitted before this court to avoid any complication or tempering of the documents in any manner. Hence, the petition of the accused Rajib Debnath filed today stands rejected.”

8. Thereafter, the learned trial Court held that cross-examination of PW-1 was not required to be connected and has fixed the calendar for the statements of the witnesses 2 to 45 from 17.8.2015 to 29.8.2015.

9. The petitioner thereafter filed one application for transfer of the Sessions Trial from the Court of the learned Additional Sessions Judge, West Tripura, Khowai to any other Court. This petition being Criminal Misc.36 of 2015 was dismissed by the learned Sessions Judge. Aggrieved by the said order this petition has been filed. Though this petition is a transfer petition, exercising powers under Section 482 of Cr.P.C. and Article 227 of the Constitution of India, I have widened the scope of the petition to do justice to the parties.

10. Before me, it was urged that the counsel had never refused to cross-examine PW-1. On going through the record, I find that the statement may not be wholly correct because not only does the order reflect that the counsel was insisting that he will cross-examine the witness only if he is permitted to confront the

witness with those documents but I also find that in the application filed immediately thereafter before the Court itself there is no allegation that what has been quoted hereinabove with regard to the order dated 22.7.2015 is incorrect.

11. Having held so, I am clearly of the view that the order of the learned trial Court was wholly incorrect. This is a criminal case and not a civil suit. In a criminal case, the accused is not required to disclose his defence at any stage prior to his statement recorded under section 313 of Cr.P.C. The Court cannot force the accused to file the documents on which he relies upon. He can confront the witnesses with those documents during cross-examination and there is no requirement of law that these documents should be filed beforehand.

12. Cross-examination of a witness is not necessarily limited to his examination-in-chief. The witness may be cross-examined on other aspects also to challenge the veracity and trustworthiness of the witness. The cross-examination, however, has to be relevant. Irrelevant questions in cross-examination can be rejected but in a criminal case, the accused not only has a right to cross-examine the witness but has a right during cross-examination to surprise the witness by drawing his attention to certain documents which are not on record. Reference in this regard may be made to Section 145 of the Indian Evidence Act, 1872 which reads as follows:-

“145. Cross-examination as to previous statements in writing.—A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.”

The requirement of the law is only that the attention of the witness should be drawn to the previous writings but there is no requirement of law that these writings must be filed in Court.

13. One of the principles of a criminal jurisprudence is that every man is presumed to be innocent till proved guilty. The burden is on the prosecution to prove the guilt of the accused. The Court, I think, was not well advised to comment that these documents could be tampered with. This was an unnecessary remark made by the Court in its order. If a document is tampered and the Court finds that a document has been tampered with, it has power under the Code of Criminal Procedure as well as the Indian Penal Code to take action against the person who tampers with documents which are filed in Court. However, merely because a document is not on the Court file and a witness is confronted with that document does not by itself show that the document is tampered or can be tampered with.

14. This brings us to the issue as to whether the case should be transferred from the Court of the Additional Sessions

Judge, Khowai or not. I am clearly of the view that merely because heat and not light has been generated during the course of the arguments is not a sufficient cause to transfer the case. From the Court orders, it is apparent that there were heated arguments and the Judge has also made unnecessary remarks which clearly show that there was some lack of communication between the counsel and the Court. Many times in Court rooms tempers rise. Many times certain remarks are made in the heat of the moment. We must, however, realize that the officers of the Court, that is the Judges as well as the lawyers have a duty to ensure that justice is done in all cases. The Bar and the Bench have to move in a spirit of camaraderie. It is often said that the Bar and the Bench are two wheels of the chariot of justice and if these wheels do not move in unison, then justice can never be done.

15. There are no allegations of personal bias or malice against the officer concerned but apprehension has been raised in the mind of the accused because of the remarks made by the learned Judge. I am not going into the veracity of all the allegations made but I am constrained to observe that the learned Judge even in the order has made certain remarks which could have been well avoided. This may be due to the fact that the arguments were very heated and very long but whatever be the reason I do hope and expect that better sense will prevail on both sides and the trial in future shall continue in a better spirit. I am clearly of the view that merely because the Judge has passed a

wrong order or because tempers have risen is not a ground to transfer the case. It is more than obvious to me that the tempers have risen on both sides and it is not completely one sided. This Court is not also oblivious to the fact that the Judge was under pressure on the administrative side to decide the case as early as possible and these applications were in a way an attempt to delay the decision of the case. If cases are transferred on this ground, it will open the floodgates to transfer petitions which cannot be permitted.

16. Therefore, the petition for transfer is rejected with the following observations:-

(i) It shall be upon the accused-petitioner to explain why the application for calling certain record was not filed earlier and what is the relevance of those documents;

(ii) PW-1 will have to be recalled for further cross-examination on behalf of the accused;

(iii) As far as the cross-examination of PW-1 on other aspects is concerned, it is made clear that the attention of PW-1 can be drawn to documents which are not on the record of the Court file and even if they are produced by the accused or counsel for the accused will not be a ground not to permit the witness to be confronted with those documents;

(iv) The calendar has been fixed for witnesses 2 to 45. The same shall be now adhered to and after deciding the

aforesaid applications the cross-examination of PW-1 shall be fixed for a date after all the other witnesses are examined. At this stage it would be highly improper to delay the trial or adjourn the trial which is fixed on 17.8.2015 onwards because witnesses have been summoned and they will come. Therefore, cross-examination of PW-1 is permitted to continue after the statements of all the other witnesses are recorded. In case, after the statement of PW-1 is recorded, it is necessary to further cross-examine any one of the other 44 witnesses, then the counsel for the petitioner shall be at liberty to move an application in this behalf before the trial Court.

17. Before parting with the case, it is again emphasized that the Presiding Officer, the Counsel for the accused and the Public Prosecutor should ensure that the trial moves smoothly and at a good speed instead of obstructions being created from any side.

18. The petition is disposed of accordingly.

CHIEF JUSTICE