

**THE HIGH COURT OF TRIPURA
AGARTALA**

**Crl. LP No.06 of 2014
In Crl. A. No.18 of 2014**

Sri Kanaklal Saha,
son of late Ruhidas Saha,
resident of Village-Haripur, Gandachara near 3 K.V.,
P.O. Sarma,
P.S. Gandachara,
District-Dhalai, Tripura – 799 284

.....Complainant-petitioner

– Vs –

1. Md. Firoj Miah,
son of Manu Miah,
Village-Kumarghat,
PS – Kumarghat,
P.O. Kumarghat,
District – Unakuti, Tripura – 799 264

.....Accused Respondent

2. The State of Tripura

.....Pro-forma Respondent

**B E F O R E
THE HON'BLE MR. JUSTICE S. TALAPATRA**

For the Complainant-petitioner	: Ms. P. Dhar, Advocate
For the respondent No.1	: None
For the respondent No.2	: Mr. A. Ghosh, Public Prosecutor
Date of hearing and delivery of Judgment & order	: 24.02.2015
Whether fit for reporting	: NO

JUDGMENT & ORDER (ORAL)

Heard Ms. P. Dhar, learned counsel appearing for the petitioner as well as Mr. A. Ghosh, learned Public Prosecutor appearing for the respondent No.2. Despite due notice, none appears for the respondent No.1.

02. This petition for granting leave under Section 378(4) of the Cr.P.C. has been filed by the complainant inasmuch as on culmination of the trial the respondent No.1 has been acquitted from the charge framed under Section 497/324/511/506/451 of the IPC.

03. Ms. Dhar, learned counsel appearing for the petitioner has submitted that the judgment and order of acquittal, for challenging which this leave petition has been filed suffers from serious perversity in appreciation of the evidence. According to her, the charge framed against the accused has been sufficiently proved. She has further submitted that the offence punishable under Section 324 of the IPC has been established by the complainant without any reasonable doubt and similarly by adequate evidence it has been also established that the respondent No.1 has committed an offence punishable under Section 497 of the IPC. Further, there are adequate materials establishing the offence punishable under Section 448 of the IPC.

04. On the face of such submission, Mr. Ghosh, learned PP did not raise any objection. He has submitted that unless there is serious perversity and there is possibility of the conviction, the court may in its discretion also refuse to grant leave for filing the appeal under Section 378(4) of the Cr.P.C. Thus, it has become incumbent on this court to make a short survey of the evidence. The prosecution led only oral evidence.

05. The complainant namely Kanaklal Saha at whose instance the complaint was put on motion has stated in the trial as PW-1 that *"On 30th September, 2012 at around evening 6-30 pm after returning to my house I have seen said Firoj Miah was having in sexual relation with my wife. Then after seeing me said Firoj Miah gave me a fist blow and ran towards my house gate.*

Then I chased towards my garage wherein he was hiding. But then and there I again assaulted by him with an iron rod. Then I cried for help to which villagers rushed therein and I narrated the incident to them.” Even when he was cross-examined, after the charge as framed on 02.05.2013, he narrated in the same way. In the cross-examination, after the charge, he has denied that he has not seen the respondent No.1 having in sexual relation with his wife or that the respondent No.1 did not assault him. PW-2 appears to be an independent witness namely Subrata Sarkar who has stated that he heard one cry from the house of the complainant, the petitioner and when he rushed to the spot he saw the complainant was being assaulted by the respondent No.1 with iron rod and thereafter the respondent No.1 fled from the place of occurrence. In the cross-examination, PW-2 has denied that he did not see that the respondent No.1 was assaulting the complainant by an iron rod. PW-3 namely Ajit Sarkar has stated that he also heard the cry from the house of the complainant and when he rushed to that direction he saw the respondent No.1 assaulting PW-1 with an iron rod. He heard that the respondent No.1 was having physical relation with the wife of the complainant. They denied that they did not rush towards the house of the complainant or did not see the respondent No.1 assaulting the complainant with an iron rod. PW-4, Sri Jiban Ch. Saha, the brother of PW-1 has stated that he was not present at the time of the occurrence but he heard from his brother PW-1 over telephone that Firoj Miah, the respondent No.1 assaulted him for objecting illicit relation with his wife. The respondent No.1 while examined under Section 313 of the Cr.P.C., denied such materials as false and under Section 315 of the Cr.P.C., he led evidence and he examined himself as DW-1.

06. From the reading of the statements of DW-1, the respondent No.1, DW-2, Sri Bapan Das, the driver of the vehicle of the respondent No.1 and DW-3, Smti. Tahara Khatun, sister of DW-1, it would surface that the plea of alibi has been sought to be established by those witnesses. DW-3, has categorically stated that Firoj Miah stayed at her residence at Agartala on 30.09.2012 as he came there for repairing his vehicle in the workshop. Similarly, DW-2 has stated that he drove the vehicle for coming to Agartala with respondent No.1.

07. Having regard to the evidence led in defence, before we go for further analysis of all the materials so placed, this Court thinks it relevant to quote the provisions of Section 497 of the I.P.C.

"Adultery - Whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery, and shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both. In such case the wife shall be punishable as an abettor."

08. None has made any endeavour to bring the wife in the trial. For purpose of convicting someone under Section 497 of the I.P.C. there must be evidence of 'sexual intercourse' with a lawful wife of someone else by the accused. If there is no evidence of the 'sexual intercourse' beyond reasonable doubt, no person can be punished under Section 497 of the I.P.C. However, in the charge which also framed under Section 324 and 448 of the IPC, so far the offence punishable under Section 448 of the IPC is concerned, unless it is shown from the evidence that there had been criminal trespass into the house of some other person, that offence cannot be held to have been proved. The charge is that the offence of adultery and hurt as covered under Section 324 of the IPC has been committed by the respondent No.1. From the oral testimonies what

has surfaced that even PW-1 did not state that he had seen the respondent No.1 committing 'sexual intercourse', what he has stated in his oral testimony is that he has seen the respondent No.1 having physical relation with his wife and he has further stated that when he chased the respondent No.1 to his garage where he was hiding, he was assaulted by the respondent No.1 with an iron rod. The other witnesses have stated that they heard the hue and cry in the house of the complainant and when they appeared there they had seen the respondent No.1 assaulting the complainant but they have not stated anywhere that they had seen the respondent No.1 assaulting the complainant with an iron rod in the garage. For illustrations, the oral testimonies of PW-2, Sri Subrata Sarkar and PW-3, Sri Ajit Sarkar may be referred to. PW-4 has also stated that there had been some illicit relation. This vague description of the act will not satisfy any criminal court to hold that there had been 'sexual intercourse' by the respondent No.1 on the relevant date even if we entirely disbelieve the defence versions advanced by way of adducing the witnesses. It is well settled principle that unless the perversity visited the finding, the order of acquittal usually shall not be interfered by the court. It is found that the defence has successfully probablised the plea of alibi as the prosecution evidence is not that overwhelming to overcome the two versions principles.

Having regard to all these aspects, this court is constrained to hold that this is not a fit case where this Court should grant leave under Section 378(4) of the Cr.P.C. Accordingly, this petition stands dismissed.

JUDGE