HIGH COURT OF TRIPURA
AGARTALA

Crl.Petn. No.46/2018

Sri Nabendu Das

----Petitioner(s)

Versus

State of Tripura

-----Respondent(s)

For Petitioner(s) : Mr. S.B. Deb, Advocate.
For Respondent(s) : Mr. S. Debnath, Addl. P.P.

HON'BLE THE CHIEF JUSTICE MR. AKIL KURESHI

Order

07/02/2020

Petitioner has challenged an order dated 07.05.2018 passed by the learned Sub-Divisional Judicial Magistrate, Kamalpur, Unakoti Judicial District by which the application of the petitioner for recalling of witness PW-17, the I.O. for further cross-examination came to be turned down.

Against the petitioner a criminal case was lodged for offence under the Motor Vehicles Act. He was convicted by the Magistrate which he challenged before the Sessions Court. Pending appeal the Sessions Court passed an order dated 20.11.2017 permitting a limited recall of certain witnesses for specific purpose. The relevant portion of the order reads as under:

> "In view of that I am of the opinion that PW-4 and PW-17 Sri Udhyam Debbarma, the IO of the case be recalled for their cross-examination regarding omission in the statement of PW-4 to the IO. DW-2 Smt. Suchitra Das shall also be called for giving additional evidence by re-examination regarding duty roster and attendance register to exhibit the same.
>
> Accordingly, the LC record be sent to the court of learned SDJM, Kamalpur to recoerd the additional evidence of

DW-2 also to recall PW-4 and the IO for cross examination on the point of contradiction as indicated above as per procedure laid down under section 391 of Cr.PC and send back the same with due certificate, preferably within two months.

Accordingly this Misc case is disposed of on contest."

Pursuant to such directions, the learned Magistrate also granted opportunity to the accused for cross-examining the witnesses by recalling I.O. and other prosecution witnesses. It appears that thereafter the accused filed a fresh application and requested that PW-17, I.O. be recalled. This application came to be turned down by the impugned judgment. The learned Judge noted that the proceedings are placed before him for the limited purpose of recording further evidence as directed by the Sessions Court and the criminal case having been disposed of by the Magisterial Court, he is no longer in charge of such proceedings.

I am broadly in agreement with the view of the learned Judge. The Sessions Court had merely requested the Magistrate to record further evidence by recalling certain witnesses for limited purpose. Once that task was over, the Magistrate would have no further control over the case. The accused certainly cannot invoke the provisions of Section 311 of Cr.P.C. for recalling the witness which can be exercised by the Court in charge of the trial or appellate Court.

In the result, petition is dismissed. Record may be returned to the appellate Court.

(AKIL KURESHI), CJ

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