GAHC010007982014

2026:GAU-AS:16862

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Rev.P./137/2014

NITYA NANDA DAS
S/O ROBINDRO DAS VILL- KHELMA PART-III, P.S. KATIGORAH, DIST. CACHAR, ASSAM.

VERSUS

THE STATE OF ASSAM
TO BE REP. BY THE PUBLIC PROSECUTOR, ASSAM.

Advocate for the Petitioner : MR.H R A CHOUDHURY, MR.R A CHOUDHURY,MR.I A HAZARIKA,MR.N H LASKAR

Advocate for the Respondent : PP, ASSAM, ,,

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

ORDER

Date : 12.11.2026

Heard Mr. I. A. Hazarika, learned counsel, appearing for the petitioner. Also heard Mr. B. Sarma, learned Additional Public Prosecutor, appearing for the State Respondents.

2. The present Criminal Revision Petition, has been instituted assailing an order dated 03.02.2014, passed by the Learned Additional Sessions Judge, Cachar, Silchar, in Sessions Case No.84/2013, rejecting the petition filed by the petitioner, praying for recall of prosecution witnesses for further examination.

3. The facts in brief requisite for adjudication of the issues arising in the present criminal revision petition, is noticed, as under;

3.1. One Kabindra Das, had lodged an FIR on 10.02.2012, *inter alia*, alleging, therein, that on 07.02.2012 at about 3:30 a.m., the accused petitioner had illegally entered his house and attempted to rape his son's wife. However, on raising hue and cry, the other inmates rushed to the spot and apprehended the accused petitioner. It was further projected that the other accused persons took away the accused petitioner with an assurance to settle the matter. However, no

settlement was made and on 08.02.2012, one of the accused persons took the informant's son to their house, where, along with the other accused persons, they forcefully administered poison to him and thereafter, released him. Upon being released, the informant's son reached his house and informed his family members of the incident. He was then taken to the hospital, where he unfortunately died on the way.

3.2. Upon receipt of an FIR, the police had registered the same as Katigorah P.S. Case No.65/2012 under Sections 143/457/354/302 IPC.

3.3. On conclusion of the investigation, the police laid a charge-sheet against the accused persons including the accused petitioner, herein, under Sections 120(B)/328/354/302 IPC. The charge being framed and explained to the petitioner and other co-accused, they having pleaded not guilty and claimed to be tried and accordingly, a Trial ensued.

3.4. In the Trial, the prosecution had examined 12 (twelve) witnesses and on conclusion of prosecution evidences, the accused persons were examined under Section 313 CrPC.

3.5. At that stage of the Trial, the petitioner, herein, had submitted a petition, praying for recalling the prosecution witnesses for further cross examination. The ground raised in the said petition for recall of

the witnesses was that the accused petitioner, herein, being in jail, at the time of recording of the evidences of the prosecution witnesses, he was not in a position to instruct his counsel properly and accordingly, relevant questions were omitted from being put to the prosecution witnesses, which had caused a prejudice to the interest of the accused petitioner. The said petition was considered by the learned Trial Court and vide order dated 03.02.2014, the said petition came to be rejected.

Being aggrieved, the petitioner has instituted the present criminal revision petition.

4. I have heard the learned counsel for the parties and also perused the materials available on record.

5. On a perusal of the petition, submitted by the petitioner, praying for grant of opportunity for further cross examination of the prosecution witnesses, this Court finds that the only ground raised, therein, was that the present accused petitioner was in judicial custody as a Under Trial prisoner and due to lack of communication with his counsel, relevant questions could not be put to the prosecution witnesses during their cross examination and accordingly, a prejudice was projected to have been caused to him. The said issue was considered by the learned Trial Court and the learned Trial Court had

held that, although, the accused petitioner, herein, was in judicial custody, however, he was present in the Court on all dates when the prosecution witnesses were examined and no plea as to the necessity of raising any further issue to the prosecution witnesses was raised at the time when such prosecution witnesses were being examined.

6. The learned Trial Court had also noticed that the other co-accused were already enlarged on bail and accordingly, they were always available for instructing the learned counsel appearing for them in the matter, as regards any issue that would be required to be raised with the prosecution witnesses.

7. The conclusions drawn by the learned Trial Court in the matter being relevant, the same is extracted hereinbelow;

> "Here in the present case in hand the examination of all the prosecution witnesses has already been completed. Even the examination of the I.O. is over. Defence cross examined all the witnesses at length. At any point of time, before submission of the present petition, the defence never raised the question of the need for further cross examination of the prosecution witnesses.
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> I have gone carefully through the petition of the defence requiring further cross examination of the witnesses. It is contended therein that as accused Nityananda Das was in jail at the time of recording of evidence, there was a gap in between the accused/ petitioner and the engaged counsel. However, accused Nityananda Das was present in the court on all the dates, when the witnesses were examined, cross examined and discharged. Thus he had the sufficient opportunity to communicate with his engaged counsel at the time of examination and cross

examination of the prosecution witnesses. Besides, the other accused persons are his relations, including his father and brothers and they had been enlarged on bail much before. So, it is not that the defence counsel had no sufficient communication from the clients, before cross examination of the witnesses.

Thus the question of being prejudiced never arose. The Defence raised the point that in the Criminal justice system, the Court may always keep in mind that an accused should not be deprived of his right which he is entitled to get in accordance with the law to prove his innocence and to disprove the prosecution case. But here in the present case in hand, the accused person was never deprived of his rights to which he was/is entitled. He had sufficient opportunity to cross examine the prosecution witnesses and in fact he availed all the opportunities to cross examine the witnesses at length. In the name of limited questions to be put for further cross examination of the witnesses, the defence prepared a draft questionnaire, which will in fact bring a fresh start of the cross examination of all the prosecution witnesses, including the doctor, save and except one A.S.I of Police (PW.9) and the Scientific Expert (PW.10). Besides, most of the questions, mentioned in the petition, had already been asked to the prosecution witnesses, either this way or that. Merely because the defence could not get the suitable or favourable replies, up to their expectations, can not be a ground for recalling the witnesses. It is to be remembered that the Court has not only a duty to the accused persons, but also to the witnesses who appear before the Court to assist it to bring out the truth. Since the prosecution witnesses has already been sufficiently cross examined, there can not be any reason or rhyme to bring those poor witnesses once again before the Court in the name of further cross examination."

8. Basing on the said conclusions, the learned Trial Court proceeded to draw the further following conclusions;

"But here in the present case in hand, as I noted above, the defence sought to cross examine almost all the prosecution witnesses save and except one A.S.I of Police (PW.9) and the Scientific Expert (PW.10). It is also not that the questions

were limited. In the name of limited questions, the defence set up a questionnaire which will in fact start a fresh cross examination.

I have already noted that the defence was given sufficient opportunities to cross examine the prosecution witnesses and they were cross examined touching all the points, and there is no question of being prejudiced in the event of rejection of the prayer of recalling the witnesses."

9. Accordingly, basing on the said conclusions, the learned Trial Court, proceeded to reject the petition, submitted by the accused petitioner invoking the provisions of Section 311 of the CrPC.

10. On a close perusal of the conclusions drawn by the learned Trial Court, this Court finds the same to be not erroneous; the plea taken by the petitioner that he being a Under Trial prisoner, was not in a position to instruct his counsel as to the line to be adopted for cross examination of the prosecution witnesses, is found to be not sustainable, inasmuch as, the presence of the accused petitioner during the examination of the prosecution witnesses is seen and the said position is not disputed by the petitioner in the present proceeding.

11. Further, the other co-accused, who were already enlarged on bail, were also available to instruct the learned counsel regarding the line of questioning to be adopted for the cross-examination of the prosecution witnesses. However, it is seen that no objection was raised

by the said co-accused while the examination of the prosecution witnesses was underway.

12. It is a settled position of law that the provisions of Section 311 of the CrPC, cannot be invoked for the purpose of covering up any lacunae that may exist in the examination of witnesses by either of the parties. Accordingly, in the present case, this Court finds that the petition invoking Section 311 of the CrPC, was instituted by the accused petitioner solely to cover up the lacunae that existed while cross-examining the prosecution witnesses.

13. Considering the stage at which the **Trial** had reached, this Court finds that the learned Trial Court **rightly** rejected the said petition submitted by the petitioner, **as** the same would have **otherwise** caused **prejudice** to the case of the **prosecution.**

14. Accordingly, in view of the above discussion, this Court finds that the impugned order dated 03.02.2014, passed by the Learned Additional Sessions Judge, Cachar, Silchar, in Sessions Case No.84/2013, would not mandate an interference from this Court and consequently, the present Criminal Revision Petition stands dismissed. However, there would be no order as to costs.

15. Interim direction(s) passed earlier, by this Court in the matter

stand vacated.

16. The learned Trial Court is directed to proceed with the matter in accordance with law and to expeditiously complete the proceedings on an early date.

17. Registry to send down the records of the case to the learned Trial Court, forthwith, along with a copy of this order for information and further necessary action.

JUDGE

Comparing Assistant