



<p>Serial No. 09 Regular List</p>

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl. Rev. P. No. 18 of 2023

Date of Hearing : 22.07.2024

Date of Decision: 22.07.2024

Shri Nisal Lamurong
S/o. Shri K. Chyrmang,
R/o. Kremmyrsiang Village,
East Jaintia Hills District,
Meghalaya.

Vs.

1. State of Meghalaya
Rep. by the Secretary,
Department of Home and
Police, Shillong, Meghalaya.

2. The Superintendent of
Police, East Jaintia Hills
District, Khliehriat,
Meghalaya.

.... **Petitioner**

..... **Respondents.**

Coram:

Hon'ble Mr. B. Bhattacharjee, Judge

Appearance:

For the Petitioner/Appellant(s) : Mrs. R. Dutta, Legal Aid Counsel.

For the Respondent(s) : Mr. R. Gurung, GA,
Mr. K.P. Bhattacharjee, GA.

i) Whether approved for reporting in Law journals etc.: Yes/No

ii) Whether approved for publication in press: Yes/No

JUDGMENT



1. This revision petition under Section 397/401 read with Section 482 Cr.PC has been filed assailing the order dated 23.05.2023 passed by the District and Sessions Judge, East Jaintia Hills District, Khliehriat, in Session Case No. 51 of 2021 by which the application under Section 311 CrPC filed by the prosecution for recalling and re-examination of PW-1, the complainant, was allowed.

2. The brief fact of the case is that the petitioner is facing trial in Sessions Case No. 57 of 2021 under Section 326/302 IPC which was charge sheeted on the basis of an FIR dated 12.12.2014 filed by the PW-1. The learned Trial Court had taken cognizance of the matter and framed charge under Section 326/302 IPC against the petitioner. On 03.03.2022, PW-1 was examined, both in chief and cross, and was discharged thereafter. Subsequently, around five prosecution witnesses were also examined. On 17.04.2023, the prosecution filed an application under Section 311 Cr.PC for recalling and re examination of the PW-1. After hearing the parties, the learned Trial Court vide order dated 23.05.2023 allowed the application. The petitioner being aggrieved, has filed this revision petition challenging the order dated 23.05.2023.

3. Ms. R. Dutta, learned Legal Aid Counsel appearing for the petitioner submits that the learned Trial Court has passed the impugned order without adhering to the basic requirement of law as mandated by the provision of Section 311 Cr.PC. She submits that passing of order on a petition for recall is not an empty formality and a witness cannot be recalled as a matter of course without assigning any valid reason. The learned counsel submits that the application filed by the prosecution did



not disclose any reason as to what necessitated the recalling of PW-1. She contends that even the impugned order did not specify any justified or valid reason for recalling the said witness. The learned counsel submits that as per the established norms of law, it is mandatory for a court to record and ascertain the essentiality of the person sought to be recalled for re-examination before allowing the prayer. In support of her contention, the learned counsel places reliance on a decision of the Apex Court reported in *Rajaram Prasad Yadav Vs. State of Bihar and Anr. (2013) 14 SSC 461 (Para 14)* and submits that the impugned order does not show that the Trial Court has recorded any valid reason for allowing the application filed by the prosecution and hence the same is liable to be interfered by this Court.

4. Mr. R. Gurung, learned GA appearing for the State, on the other hand supports the impugned order and submits that the Trial Court in its wisdom found it essential to recall the PW-1 for re-examination on the basis of the facts and circumstances of the case. He submits that it is not required for a Trial Court to record elaborate reason in every case concerning recalling of witness. He contends that the Trial Court in its order dated 23.05.2023 has held that some essential facts is required to be extracted from the PW-1 to enable the Court to reach at a just decision of the case and in such a situation, it cannot be said that the impugned order suffers from any illegality or infirmity requiring interference by this Court. The learned GA places reliance on the decision of the Apex Court reported in *V.N. Patil Vs. K. Niranjana Kumra and Ors. (2021) 3 SSC 661, (para-23)* and submits that the present revision petition is devoid of merit



and be dismissed.

5. Heard learned counsel for the parties and perused the materials available on record.

6. The record reveals that the evidence of the PW-1 was recorded before the Trial Court on 03.03.2022 and after examination-in-chief and cross examination, the witness was discharged. Thereafter, another five prosecution witnesses were examined which includes the Investigating Officer of the case, examined as the PW-6. The application of recalling of PW-1 was filed by the prosecution on 17.04.2023. The only reason for recalling of the witness as stated at para 1 of the said application is reproduced below: -

“ 1.The prosecution would like to file the instant application for recalling and re-examine the below mentioned prosecution witness who is the complainant in the instant case as her evidence appears to be essential for the prosecution case.”

Apart from the above, no other ground is made out in the application. It is not stated therein whether the recalling and the re-examination of the PW-1 is required for explaining the matter referred to in cross-examination or for introducing a new matter in relation to the fact of the case.

7. Section 138 of the Indian Evidence Act, 1972 sets out the order of examination of witnesses in a trial. It also contains provisions for direction of re-examination of witness for explanation of matters referred to in cross-examination and for introduction of new matter with permission of the court. Hence, it is essential for a court to mention for



what purpose a witness is sought to be recalled, whether for clarification of matters referred to in cross-examination or for introduction of new matter, or for both purposes. A witness cannot be recalled for the purpose of putting repetitive question in order to seek improvement of evidence which is already a part of record. In the instant matter, the learned Trial Court has not recorded any such reason while allowing the application for recalling filed by the prosecution.

8. A bare perusal of the impugned order reveals that the learned Trial Court has passed the order on the basis of the statement of the complainant under Section 161 Cr.PC and also the confession statement of the accused. The statement of the complainant under Section 161 Cr.PC was available on record when the PW-1 was examined by the Trial Court on 03.03.2022. It is nowhere recorded that some of the facts, essential for the just and proper decision of the case, has not been extracted from PW-1. That apart, there is nothing on record to show that the PW-1 had played any part in the recording of the confessional statement of the accused in the matter. Thus, merely because there exists a confessional statement of the accused in the matter, it cannot be a ground for recalling the PW-1.

9. The decision of *Rajaram Prasad Yadav (supra)* at para 14 stipulates that when recalling and re-examining of any person already examined is concerned, the court must necessarily consider and ensure that such recall and re-examination of any person, appears in the view of the court to be essential for the just decision of the case. Therefore, the paramount requirement is just decision and for that purpose, the



essentiality of a person to be recalled and re-examined has to be ascertained. In the present case, it appears that the learned Trial Court has passed the impugned order without recording any finding to ascertain the essentiality of the person ordered to be recalled. The application for recalling did not mention about occurrence of any error in the recording of evidence of the PW-1. In such a situation, there is every likelihood that the petitioner will be highly prejudiced in the event the PW-1 is examined afresh in the guise of re-examination by the prosecution on the basis of the impugned order.

10. The decision of *V.N. Patil (supra)* relied on by the learned GA at paragraph 23 lays down that it is not necessary that in every case, it is required to record elaborate reason. However, the proposition laid down therein cannot be interpreted to say that no valid reason is required to be recorded. In the present matter, the foundation for recall, as is indicated in the application for recall, does not even remotely make out a case that such recalling is necessary for just decision of the case or to arrive at the truth. The reasons recorded by the Trial Court in allowing the application for recall also do not specify the requirement of recalling, as to whether for some clarification or for any new evidence needed by the court. While advancement of justice remains the prime object of law, recall cannot be allowed on mere asking or reasons related to convenience. Mere observation that the recall was necessary for a just decision is not enough unless there is tangible reason to show how just decision would suffer without recall. The application filed by the prosecution is totally silent in this regard.



11. In view of the above, the impugned order dated 23.05.2023 passed in Sessions Case No. 57 of 2021 by the Sessions Judge, East Jaintia Hills District, Khliehriat, cannot be sustained in law and the same is set aside and quashed.

12. The Revision Petition stands allowed.

Judge

Meghalaya

22.07.2024

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