

**B E F O R E  
THE HON'BLE THE CHIEF JUSTICE MR. T. VAIPHEI**

**Present :**

For the petitioner : Mr. B. Deb, Advocate.  
Mr. D. Bakshi, Advocate.  
For the respondent : Mr. S. Sarkar, Advocate.

**31.07.2017**

Both Mr. B. Deb, the learned counsel for the petitioner and Mr. S. Sarkar, the learned Public Prosecutor appearing for the State, are heard at some length.

This revision is directed against the order dated 18-07-2016 passed by the learned Assistant Sessions Judge, Dharmanagar, North Tripura in Case No. S.T. (T-2) 18 of 2015 U/s 279/304 Part-II of IPC and Sections 196/187 of M.V. Act for recalling the prosecution witnesses i.e. P.Ws.10, 11 & 12 for cross-examination.

The case of the revision petitioner is that the trial Court fixed 22-06-2017 for examination of witnesses and examined P.Ws.10 11 & 12 on that day. It would appear that on that particular day, no vehicle or train could ply on the road due to bandh and blockage of National Highway and Railway organized by a certain political party, namely, IPFT, which prevented the counsel for the petitioner from appearing in Court to cross-examine those witnesses. The petitioner, feeling frustrated due to the inability of his counsel to appear, filed an application before the trial Court narrating the facts and circumstances under which his counsel could not appear and sought for time. The trial Court apparently did not accept the application and while rejecting the prayer of the petitioner proceeded to appoint one legal aid counsel to complete the cross-examination of the 3(three) witnesses. On that day, one original spot visit report of Scientific Officer dated 12-07-2014 was submitted by the learned Public Prosecutor wherein it was categorically stated that the original report was mistakenly scrapped in police docket

and it could not be placed in the judicial docket at the time of filing of the charge sheet, but the report was somehow exhibited by the trial Court in the absence of the defence counsel. Subsequently, on 23-06-2016, the learned counsel for the petitioner appeared before the trial Court and filed a petition for recalling the said witnesses as already indicated above, but the trial Court did not pass any order in this behalf. It, however, examined one Sub Inspector namely, Suresh Debbarma as PW-13 on that day i.e. 23-06-2016 and was cross-examined by the learned defence counsel. It transpired that on 18-07-2016, the trial Court passed the impugned order rejecting the prayer of recalling the prosecution witnesses and proceeded to fix 08-08-2016 for examination of the remaining witnesses/production of evidence. Aggrieved by this, this revision petition has been filed.

On going through the impugned order, it is crystal clear that apparently, the learned counsel for the petitioner could not make it to the Court due to bandh and blockade of National Highway and Railway network organized by the certain political party. Instead of adjourning the case on this ground despite the prayer made to that effect by the petitioner himself, the trial Court proceeded to appoint a legal aid counsel and allowed him to cross-examine PWs.10, 11 & 12 on that day itself. In my opinion, cross-examination of witness is a serious exercise and requires time and painstaking effort for meaningful cross-examination of the witnesses. It is neither possible nor desirable for a legal aid counsel appointed on the same day by the trial Court to examine the prosecution witnesses when he hardly had time to prepare for cross-examination of the prosecution witnesses. What the trial Court has apparently done is a something like a mock trial in which the right of the accused to fair trial appears to have been seriously compromised. In my opinion, the trial Court has improperly exercised its jurisdiction in rejecting the application of the defence for recalling

PWs.10, 11 & 12 for their cross-examination. This calls for the interference of this Court.

Consequently, the impugned order, insofar as it rejected the application of the petitioner for recalling of the said witnesses for cross-examination is concerned, cannot stand and is, accordingly, quashed. The trial Court shall now permit the petitioner to cross-examine PWs.10, 11 & 12 through a counsel of their choice and thereafter proceed with the trial in accordance with law.

The revision petition is allowed in the manner indicated above. The stay order stands vacated. Transmit the L.C records forthwith.

**CHIEF JUSTICE**

*Dipesh*