

THE HIGH COURT OF TRIPURA
AGARTALA

CRL. REV. P. 07 of 2015 (D/O)

Shri Dulal Dhar (52),
S/O. Lt. Nirmal Dhar,
Of village Bania Cherra Kemper Tilla,
Post office—Melaghar,
Police Station- Melaghar,
District- Sepahijala, Tripura.

..... **Revision petitioner on
behalf of the accused
person in custody.**

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Durlav Dhar alias Raju alias Sonai,
S/O. Shri Dulal Dhar,
Of village Bania Cherra Kemper Tilla,
Post office—Melaghar,
Police Station- Melaghar,
District- Sepahijala, Tripura.

..... **Accused person in
custody.**

- V e r s u s -

The State of Tripura.

..... **Respondent.**

BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

For the Petitioner	: None.
For the respondent	: Mr. R.C. Debnath, Addl. P.P.
Date of hearing & Delivery of judgment & order	: 30.06.2015.
Whether fit for reporting	: Yes.

JUDGMENT & ORDER (ORAL)

While disposing of Criminal Revision Petition No.7 of 2015 vide judgment dated 18.02.2015, this Court had noticed a disturbing state of affair. This is a case where while granting bail to the accused, this Court had directed that the case should be disposed of at the earliest and the petitioner would be released on bail only after the statement of the prosecutrix is recorded. However, to avoid the prosecution delaying the release of the petitioner on bail, it was further ordered that in case the prosecutrix is not examined then the petitioner shall be entitled to be released on bail after the date fixed for examination of the prosecutrix.

2. Surprisingly, on 05.02.2015, counsel for the bail-petitioner moved an application that the matter be adjourned because he wanted to challenge some order of the trial Court in Revision before the High Court. This obviously meant that the counsel for the accused did not want the witnesses to be examined on that day. When bail was granted specifically on the understanding that the bail petitioner would be released on bail after the evidence of the prosecutrix and witnesses are recorded it was not expected that the counsel for the defence should have made this request. Even the Public Prosecutor, who was present, did not oppose this application and therefore, this Court is unable

to do anything in the matter because neither the State opposed the application for grant of bail before the trial Court nor filed any petition before this Court. Surprisingly, on the date, when the bail was granted three witnesses were present, but their statements were not recorded. This Court noted that a letter had been sent to Mr. R.C. Debnath, learned Addl. P.P., appearing in this Court by the Officer-in-charge of Melaghar Police Station which reads as follows:-

"To

***The Public Prosecutor
High Court of Agartala.***

***Reference:- MLG P.S. Case No.-93/14 (Special
PCSO/01/ 2015) in c/w Criminal
Revision Petition No.-07/2015.***

Sir,

As per your verbal instruction I have verified the deposition of three witness namely (1) Miss Susmita Debnath (2) Smti. Manju Debnath and (3) Supriya Debbarma (Saha) on 05/02/2015 before Ld. Court of Special Judge, Agartala. All the three witnesses appeared before Ld. Court on 05/02/2015. On being asked witnesses Sl. No.-1 & 2 stated that while they reached at Court at that time one person appeared before them and given his identity as 'Muhari' and stated that today is time over and Magistrate is not available. He also stated them next date will be informed over telephone. They also demanded for Court Certificate but he told them Court Certificate is not required. Accordingly they returned to their house at Melaghar. Witness Sl. No.-3 appeared before Ld. Court on 05/02/15 but she stated that he returned without examination and taken certificate from Court. On asking she also produce the Court Certificate before me.

This is for favour of your kind information please.

***Yours faithfully,
Sd/-(Illegible)
16/02/15.
Officer-in-charge***

**Melagarh Police Station
Sepahijala, Tripura."**

3. Thereafter, this Court had passed the following order:-

"15. According to the In-charge of the Police Station, three witnesses including the prosecutrix, the mother of the prosecutrix and the eye witness went to the Court on 05-02-2015. According to them, they were told that when they reached the Court, one person appeared before them and stated that he was the 'Muhari' (Clerk of an Advocate) and stated that Court time is over and the Magistrate is not available and, therefore, sent them back. When they asked for Court Certificates, he told them that the Court Certificate is not required. They returned to their houses at Melaghar. Witness No.3, however, again appeared before the learned Court and according to her, she was sent back without examination and she had taken the certificate from the Court. The certificate has been attached and it has not been issued by the Court but by the Additional Public Prosecutor, West Tripura, Agartala. A communication sent to Mr. Debnath, the Addl. Public Prosecutor by the Public Prosecutor handling the case is also attached. It shows that the Public Prosecutor handling the case was not available on 05-02-2015 and in his absence, the Additional Public Prosecutor had taken steps in connection with the case. According to the Public Prosecutor, no witnesses came on that day, i.e. 05-02-2015 and, therefore, none came to Court.

16. At this stage, this Court cannot decide who is telling the truth. However, one fact is certain that the Court record is correct. There is no hazira on the Court record to show that three witnesses were present on 05-02-2015. Even the Public Prosecutor in his letter has stated that on 05-02-2015 no witnesses were present. However, I am of the prima facie opinion that the prosecutrix, her mother and one eye witness did come to Court that day and somebody sent them back. Who that somebody was cannot be decided by this Court in these proceedings. Therefore, when these witnesses appear in Court, the learned Special Judge will specifically ask the victim and the witnesses to identify or give description of the person who sent them back from Court and a regular inquiry in the matter will be held and thereafter, a report in this behalf shall be submitted to this Court on the administrative side."

4. An inquiry report has now been submitted by the learned Sessions Judge and I have perused the same. The case

made up in the inquiry report is totally different. Now it is stated that Smt. Supriya Debbarma, P.W.1 met Shri Amal Das Choudhury, the Clerk of the Public Prosecutor in the Court complex on 05.02.2015 and Shri Amal Das Choudhury informed the witness that since the Public Prosecutor was on leave, the case would not be taken up and advised the witness to leave. I fail to understand how Shri Amal Das Choudhury could have directed the witness to act accordingly. It is only the Court which can discharge the witnesses and dispense with the presence of the witnesses. The Public Prosecutor, much less his Clerk has no authority to issue such directions. Whether the Public Prosecutor is present or not present and even if the Presiding Officer is not present then also the witnesses must be produced before the Court and their presence recorded in the Court record.

5. The other two witnesses as per this inquiry report reached the Court complex at 11 - 11.15 a.m. and they were also informed by Shri Amal Das Choudhury that they may leave. I am not satisfied with the statement of Shri Amal Das Choudhury because in the letter earlier written by the Officer-in-Charge of the Melaghar Police Station, it is clearly mentioned that they also demanded Court certificates and the person who met them told them Court certificate was not necessary. The witness at Serial No.3 was given a certificate. On closer examination I found that this was not a certificate issued by the Court, but issued by the

Additional Public Prosecutor's office. This is no certificate in the eyes of law.

6. Witnesses are the most important persons in our system of adversarial litigation. In a civil case, the parties are litigating for their rights trying to establish one's preferential right over the other. In a criminal case, the State or the complainant is trying to prove that the accused is guilty whereas the interest of the accused is to prove that he is innocent. All have a personal interest in the matter. The lawyers, whether they be Public Prosecutors, legal aid counsel or lawyers engaged by parties are paid fees and they also have a vested interest in appearing in the matters. The Judges who preside over the Court and the ministerial staff attached with the Court get salary from the Government to do their job. The only person who has no personal axe to grind is the witness. He comes there to help the Court to decide the matter. In our judicial system, more often than not witnesses are treated with disrespect. They are made to wait for hours outside the Court room. There is no place for them to sit. No provision is made to provide them drinking water and we expect witnesses to remain present throughout the day.

7. Earlier also, this Court while disposing of Crl. Petn.35 of 2014 had given certain directions with regard to examination of witnesses, which are as follows:-

" (i) The Presiding Officer of the Court shall invariably maintain a chart or a diary and shall himself fix the dates of the cases in each and every case;

(ii) The dates shall be fixed keeping in view the case flow rules and case flow management rules as well as all other rules and directions issued by the Court;

(iii) Priority shall be given to prioritized cases, such as cases of senior citizens, cases involving matrimonial disputes etc.;

(iv) In all cases, especially in Sessions cases, care shall be taken to mention in the order sheet the names and the witness number of each and every witness who is examined on a particular date. The names of the witnesses who are present but not examined shall also be clearly mentioned in the order sheet. The reasons for not examining the witnesses shall also be clearly mentioned in the order sheet;

(v) If steps have not been taken by a party or the State to summon the witnesses, then that shall be reflected in the order sheet. If summons are not issued by Court staff or by the police officials, then an inquiry shall be conducted and the responsibility shall be fixed on the erring officials, Court staff or police officials;

(vi) If witnesses are not present despite being served, then action in accordance with law, the CPC or the Cr.P.C. whichever may be applicable, shall be taken;

(vii) In a sessions case, an effort must be made to see that the witnesses are examined during the calendar and the Court Inspector attached to the Court should inform the Court well in advance why the witnesses have not been served. In criminal cases, it is essential that witnesses are examined at the earliest when their memory is fresh and there is no use of examining a witness after five years because he would invariably have forgotten many details and there will be inconsistencies in the statements;

(viii) In Sessions Trial, an effort shall be made to dispose of the sessions trial within 6 months of the framing of the Charge and dates shall be fixed accordingly;

(ix) In cases involving crimes against woman, the period shall be 4 months;

(x) Dates should not be given merely at the asking of the counsel for the parties, especially in a sessions trial where witnesses are present. The Public Prosecutor or the defence counsel must make arrangements to ensure that somebody is prepared to examine or cross-examine the witnesses;

(xi) This Court is aware that in criminal cases the accused cannot go unrepresented and, therefore, sometimes if the counsel for the accused does not appear,

then a date may have to be given, but as far as possible only one date should be allowed for this purpose;

(xii) When witnesses are present, they should be examined even if the Court has to sit beyond court hours and they should not normally be sent home unexamined unless there are very very compelling reasons for the same;

(xiii) When the list of witnesses is filed whether in a criminal case or in a civil case, the Court is authorised under law to ask the counsel filing the list of witnesses as to what is the purpose of examining the witnesses and what do they have to prove. It is not necessary that the witnesses have to be summoned serial wise as mentioned in the list of witnesses. Even at the time of fixing the calendar, it should be ensured that eye witnesses are examined on one date so that contradictions, if any, can be brought out and they cannot be tutored either by the prosecution or by the defence. If there are different sets of witnesses, those different sets of witnesses must be examined on separate dates keeping in view the nature of their examination;

(xiv) In all cases where medical experts such as, doctors or other persons who have other pursuits to follow appear as witnesses, they should be examined at 10 a.m. in the morning so that the doctor can go to the hospital and do his work instead of sitting in Court for 4/5 hours a day;

(xv) In all cases if a witness is given up by the party, the said fact shall be clearly reflected in the order sheet. In a criminal case if the Public Prosecutor gives up certain witnesses, then the reason given by the P.P./APP for not examining the said witnesses must also be recorded."

This judgment was passed on 19.06.2014 and was circulated to all the judicial officers in the State. I am sorry to remark that despite this judgment having been circulated the directions issued are not being followed. If the directions are followed then obviously the witnesses have to be personally present in Court.

8. Whatever be the truth in the present case but one undisputed fact is that the Clerk of the Public Prosecutor had no business of sending the witnesses back. He should have ensured that they are produced before the Court and their presence should have been recorded. How can the office of the Public Prosecutor presume that the Court is going to grant an adjournment just because the Public Prosecutor is on leave? An adjournment is granted by the Court on a request being made to it and no presumption can be raised by any party including the Public Prosecutor or the defence counsel that the matter is going to be adjourned. If any such practice is prevalent in Tripura that must come to an end forthwith. The Court and the Presiding Officers of the Court are responsible to ensure that witnesses are treated with full respect.

9. Therefore, the following directions are issued in addition to the directions referred to in Para 7 above, which are as follows:-

(i) In future, the presence of all witnesses must be marked in the order sheet whether their statements are recorded or not recorded;

(ii) The statements of witnesses who are present must ordinarily be recorded and witnesses should not be discharged merely at the asking of the parties or their counsel. The Judges must realize that honest truthful

witnesses have no personal interest in the case and if we do not deal with them properly then the Courts will be flooded with dishonest witnesses who will appear at the behest of the parties and honest witnesses shall shy away from appearing in the Courts;

(iii) The statements of the witnesses should be recorded as far possible in the first half of the day;

(iv) The witnesses should be paid the road and diet money by the Court staff on the date when the witness is examined. It is the responsibility of the State to ensure that the transport and diet money also referred to as the T.A. and D.A. of the witnesses is deposited in Court and the witnesses are paid the diet money on the day when their statement is recorded if not earlier. The present practice of telling the witness that his money will be sent by money order cannot be permitted to continue;

(v) To ensure this, the Presiding Officer of the Courts shall ensure that sufficient funds are available with them in this behalf. It shall be the responsibility of the State and the Public Prosecutor/Assistant Public Prosecutor in criminal cases to ensure that sufficient funds are available with each Court to pay the witnesses. Therefore, it is directed that each Court by the 15th of the month shall find out what is the balance amount, if any, left with it and shall inform the Public Prosecutor/Assistant Public

Prosecutor attached to the Court that funds are short and it will hereby be the duty of the Public Prosecutor/Assistant Prosecutor in conjunction with the Law Department to ensure that sufficient funds as demanded by the Court for payment to witnesses are deposited in the Court before the first of the next month. In the civil cases, it shall be the responsibility of the parties to deposit the diet money;

(vi) In the order sheet of the date the names of all the witnesses who are present shall be clearly mentioned. It shall also be mentioned which witnesses have been examined and the reasons for non-examination of any of the witnesses present shall also be mentioned.

(vii) All orders, in any Court case, must be passed in the presence of the Judicial Officer. No order even of adjourning of case shall be passed in case the Presiding Officer is not present in the Court hall. Only those orders shall be passed in chambers where either the case has been heard in camera such as the cases of custody of minor children or cases which are taken up in Chamber due to certain private personal matters being discussed. All other cases will be taken up only in the Court room and all orders shall be either personally written by the Judge or personally dictated by him to the Court staff.

10. Directions (iv) and (v) in respect of criminal cases shall be enforced w.e.f. 1st October, 2015. All other directions shall be enforced from 1st August, 2015.

11. Copy of this judgment shall be circulated to all the Members of the Tripura Judicial Service. A copy of this judgment shall also be sent to the Secretary, Law as well as the Secretary, Home to the Government of Tripura to ensure that in future, in all criminal cases, there are sufficient funds available with the Court to make payment to the witnesses on each date on which they appear in Court.

CHIEF JUSTICE

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