



**IN THE COURT OF ADDL. SESSIONS JUDGE,
WEST TRIPURA, AGARTALA(COURT NO.5).**

Case No.Criminal Revision No.1(1)/2011

Smti Anjali Deb,
W/O Shri Amar Chandra Deb,
of Anandanagar, P.S.- Srinagar,
Dist.- West Tripura. _____ PETITIONER

VS

1.Sri Amar Chandra Deb,
S/O Late Nepal Chandra Deb,
Resident of Kamalpur (Noagaon),
P.S.-Kamalpur, P.O.-Noagaon,
Dist.- Dhalai.

2. Smti Jogamaya Deb (Das),
W/O Shri Amar Chandra Deb,
D/O Late Gouranga Das,
Resident of Shibnagar, P.O.-Agartala College,
P.S.- East Agartala, Dist.- West Tripura.

3.Smti Bijoli Deb,
D/O Late Nepal Ch. Deb,
Resident of Village & P.O.- Noagaon,
P.S.- Kamalpur, Dist.- Dhalai.

4.Shri Bhajan Ch. Deb,
S/O Late Sachindra Ch. Deb,
Resident of Chandinamura,
P.O.-Madhya Bhubaban, P.S.- West Agartala,
Dist.- West Tripura.

5.Smti Jyotshna Das,
W/O Late Gouranga Das,
Resident of Shibnagar, P.O.-Agartala College,
P.S.- East Agartala, Dist.- West Tripura.

6. State of Tripura. _____ OPP. PARTIES

PRESENT

Shri Sabyasachi Datta Purkayastha.
Addl. Sessions Judge,
West Tripura, Agartala.



Ld. Advocate for the petitioner : 1.Shri Biplab Debnath,
2.Smti Rumela Guha.

Ld. Advocates for the O.P. nos.1,3 &4: 1.Shri P.Roy Barman,
2. Smti Sebika Dey.

Ld. Advocate for Opp. Party no.2 : 1. Shri Nikhil Datta.

Date of argument : 03.11.2011

Date of Judgment : 14.11.2011

JUDGMENT

This is a revision petition filed u/s 397/399 of Criminal Procedure Code impugning the order dated 23.12.2010 in CR case no.2546 of 2004 by Ld. Sub-divisional Judicial Magistrate, Bishalgarh, West Tripura.

2) Brief facts responsible for initiation of instant revision petition is that the present petitioner being complainant filed a complainant before Ld.Chief Judicial Magistrate, West Tripura, Agartala bearing no.CR.2546/2004 alleging, inter alia, that she married the Opp. party no.1 on 14.12.1991 as per Hindu rites and one female child was also born due to that wedlock. Thereafter separation took place between them and ultimately the petitioner on 20.04.2003 could learn that the Opp. Party no.1 again had married Opp. party no.2. Hence the petitioner filed the complaint u/s 494/114 I.P.C. and cognizance was also taken accordingly. Thereafter, from the side of complainant she examined herself as P.W.1 and one Dipak kar Choudhury was examined as P.W.2 at the stage of evidence before charge on 6.9.2010. Next date was fixed on 13.10.2010 for discussion and framing of charge which was adjourned due to death of one accused namely Rekha Deb and next date was fixed on 16.11.2010 for discussion and framing of charge and on that date the present petitioner(complainant) filed petition u/s 311 Cr.P.C. for re-examination of her witness and also verbally prayed for time. Ld. Trial Court passed no order asto petition u/s 311 Cr.P.C. rather time was allowed. In that order dtd.16.11.2010 Ld. Trial Court mentioned about one line of cross-examination of the complainant(P.W.1) wherein she admitted that she had filed another case on the same issue at Agartala but the said case was not disposed of. Ld. Trial Court directed the accused persons to furnish necessary particulars of that case by the next date fixing the same on 23.12.2010 for necessary order. On the said date i.e. on 23.12.2010, Petitioner was absent by petition and from the side of the accused persons, photocopy of one complaint petition was filed before the Ld. Trial Court and on the same date, the Court below discharged all the accused persons on the ground that the complainant in her cross-examination admitted that she filed another case on that issue which was then pending. Thus, said order dated 23.12.2010 has been placed for further judicial scrutiny in this revision.



3) During hearing Ld. Counsel for the petitioner referring para no.12 of the original complaint petition submitted that already in complaint petition they mentioned that a case bearing no. C.R.2332/2003 u/s 494/114 of I.P.C. was filed by them which was dismissed for default on 16.9.2004 by Ld. Chief Judicial Magistrate, West Tripura, Agartala, but Ld. Court below ignored the same. He further submitted that the petitioner being a rustic lady could not understand the question put to her in her cross-examination and gave incorrect answer that the said case was pending. For that reason, a petition was filed for re-examination of the petitioner but Ld. Trial Court did not give them any scope for such re-examination. He referred a decision of Hon'ble Supreme Court in between **Govinda Raju Vs State of Karnataka** (reported in (2010)1S.C.C.(Cri)1342) wherein Hon'ble Supreme Court laid down the law in para 27 to the effect- ".....It is a basic principle that the evidence of witness has to be appreciated as a whole, when the evidence is of an ordinary witness, who is not much educated and comes from a poor strata of society not having the advantage of education. The court has to keep in mind all these aspects...." Ld. Counsel further submitted that they did not get any scope for re-examination of their witness on that point and Ld. Trial Court erred in discharging the accused persons without taking any cogent evidence. He mentioned of one affidavit sworn by the petitioner in support of her revision petition and her contention that no such case was pending before any Court.

4) Ld. Counsels for the Opp. Party nos.1,4,5 and Opp. Party no.2 referring to the cross examination portion of the P.W.1(present petitioner) submitted that the petitioner already admitted in her cross that there was a case pending at Agartala on the same issue. Ld. Counsels gave emphasis on the words 'a case' and submitted that the petitioner did not mention the case number in her cross-examination and as such the case number which was mentioned in her complaint as 'disposed of' was not the same case which she stated in her cross. As per them Ld. Trial Court rightly discharged the accused persons.

5) Ld. Addl. P.P., Mr. J. Bhattacharjee appearing for the Opp. Party no.6, the State submitted that there was no irregularity or illegality in the impugned order. As the petitioner was reluctant to adduce any evidence on the point of dismissal of the previous case for default, the Trial Court rightly passed the impugned order.

6) I have gone through the entire record meticulously. At the outset, it should be borne in the mind that there is no provision in the Cr.P.C. Like 'res-subjudice' as is available in Civil Procedure Code. However, the relevant provision in the Cr. P.C. is Section 300 and another related provision as available in our Constitution is Article 20(2) i.e the principle of double jeopardy. On perusal of the impugned order, I find that nowhere Ld. Trial Court has come to the definite conclusion that the present case was either barred u/s 300 Cr. P.C. or under Art.20(2) of the Constitution, but straightway proceeded to discharge the accused persons simply observing that there was another case pending on that issue. While doing so, Ld. Court below blindly relied on the



statement of the rustic petitioner as she stated in her cross-examination that another case was pending at Agartala on the same issue. Ld. Trial Court even did not ask for any concrete evidence either from the side of petitioner or from the side of the Opp. Party nos.1 to 5 on the said issue. He simply relied on a photocopy of the complaint petition of case no. CR.2332/03 as was submitted from the side of accused persons, but did not ask for any order of the Court to see that whether the previous case was pending till date of impugned order or not and if the same was disposed of, whether it was disposed of on merit or not.

7) In this regard, a decision of our Hon'ble Gauhati High Court in ***Premananda Nama Sudra & another Vs State of Tripura & others*** (reported in 2011(4)GLT 1) requires mention here to the effect that while discussing the matter of Sec.300 Cr.P.C., Hon'ble High Court discussed the matter of **autrefois acquit and autrefois convict** and was also pleased to refer some important quotations from Halsbury's Laws of England, 2nd Edn. Vol.9 while referring to a decision of Hon'ble Supreme Court and the relevant portion thereof is depicted below-

"If the defendant pleads autrefois convict or autrefois acquit, the prosecution replies or demurs. If the prosecution replies, which is the usual course, a jury is sworn to try the issue(x). The onus of proving the plea is on the defendant(a). He may prove it by producing a certified copy of the record or proceedings of the alleged previous conviction or acquittal(b), and showing by such copy or by other evidence, if necessary, that he has been convicted or acquitted of the same, or practically the same offence as that on which he has been arraigned(c), or that he might on his former trial have been convicted of the offence on which he has been arraigned(d)....."

8) In our present case in hand, from the side of defence, an attempt has been made to create a cloud in the mind of the Court by submitting the photocopy of one complainant petition filed earlier in another court by the complainant, but they either intentionally or unintentionally refrained themselves from producing any order either final or latest, to show the present position of the former proceeding on the same issue, despite the fact that the law cast a duty on their shoulder to prove the same by cogent evidence to have the benefit of Sec.300 Cr.P.C. Or Art.20(2) of the Constitution. Ld. Trial Court also ignored the fact that in the complaint petition, the petitioner specifically asserted that the said former case bearing no. CR.2332/2003 was dismissed for default on 16.9.2004 by the then Ld. Judicial Magistrate, 1st Class, Agartala, but simply gave extra importance on the statement of a rustic witness like petitioner without inquiring further in that matter. Ld. Trial Court even did not wait for filing of any evidence from the side of petitioner on that point and worked in a hurried way

9) Basing upon the discussions made above, it is held that the impugned order is not proper and legally valid one and the same is liable to be set aside. Accordingly, the impugned order dated 23.12.2010 passed by Ld. Sub-



divisional Judicial Magistrate, Bishalgarh, West Tripura in CR 2546/2004 is hereby set aside and the case is thus remanded back to the Ld. Trial Court for proceeding with the case as per law. Both the present petitioner and the Opp. Parties are directed to appear before Ld. Court below on 15.12.2011 and both the parties shall have the liberty to adduce evidence before the Trial Court, either by way of re-examination of petitioner or by way of defence evidence from the side of Opp. parties, on the said issue of said former case. I hope that Ld. Trial Court will take all the endeavor to dispose of the case as expeditiously as possible as it is an old pending case.

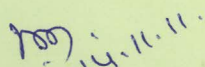
10) The revision petition is thus allowed on contest.

11) Send back the L.C. Record with a copy of this order.

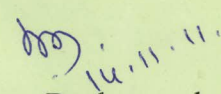
12) Enter the result in the relevant register.

ANNOUNCED.

Typed to my dictation
and corrected by me.


(S. Datta Purkayastha)
Addl. Sessions Judge
West Tripura, Agartala.

Addl. Sessions Judge.
West Tripura, Agartala.


(S. Datta Purkayastha)
Addl. Sessions Judge
West Tripura, Agartala.

Addl. Sessions Judge.
West Tripura, Agartala.