

**IN THE COURT OF THE SESSIONS JUDGE SONITPUR:: TEZPUR**

**CRIMINAL REVISION NO. 06(S-1) 2021**

**PRESENT : Sri Chatra Bhukhon Gogoi  
Sessions Judge,  
Sonitpur, Tezpur.**

1. Sri Bikash Gupta @ Saha and  
2. Sri Utpal Kumar Medhi. .... **Petitioners.**

**- Versus -**

1. Smti Himakshi Nath and  
2. State of Assam ..... **Opposite parties**

**A P P E A R A N C E**

For the Petitioners : I. Ansari, Advocate.

For the Opposite parties : Sri M.C. Baruah, P.P.

**Date of Argument : 05-01-2022**

**Date of Judgment : 18-01-2022.**

**J U D G M E N T**

**1.** This revision petition is directed against the impugned orders dated 17-03-2021 and 24-03-2021 passed by learned Sub-Divisional Judicial Magistrate (Sadar), Sonitpur, Tezpur in connection with G.R. Case No. 1280/2013 u/s 380 IPC praying for setting aside the orders passed by the learned Magistrate with a further prayer to transfer the case to any other court by exercising powers u/s 408 Cr.P.C.

**2.** The fact of the case, in brief, is that accused/revision petitioners were arrested by police in connection with Tezpur PS Case No. 674/13 u/s 380 IPC and on conclusion of investigation, police finally laid charge sheet only against accused Sri Dibyajyoti Das and Sri Chanakya Nath and present accused/revision petitioners namely, Sri Bikash Gupta @ Saha, Sri Utpal Kumar Medhi and another

Nayanjyoti Nath were not sent up for trial, out of which Nayanjyoti Nath was juvenile.

**3.** During the course of trial, after examination of informant-cum-PW 1 Himakshi Nath, the present revision petitioners have been impleaded by court as accused on 06-07-2013 by exercising power u/s 319 Cr.P.C.

**4.** Summons having been received from the court, the revision petitioners appeared in court and filed objection against the order of calling them as accused but learned court rejected their prayer. The Court also rejected their prayer to conduct the case de-novo. Subsequent to it, court examined PW 2, PW 3, PW 4 and PW 5 but court closed recording of further evidence of prosecution without examining the I.O. and fixed the case for recording statement of accused u/s 313 Cr.P.C. and for hearing argument on 06-12-2019.

**5.** However, due to Nationwide Lock Down starting from 24-03-2020 court works have been paralyzed till 02-01-2021 and during that period without hearing argument of both sides, learned court passed an order dated 02-07-2020 in a casual and mechanical manner that court heard argument of both sides. After resumption of regular court work, learned Public Prosecutor made a petition to call the I.O. again and court allowed the prayer on 12-01-2021 but surprisingly, court by ignoring order dated 27-01-2021, fixed the next date of hearing the case on 28-01-2021. It is alleged that the orders passed by the trial court were inconsistent, casual and mechanical in nature as court did not allow/provide opportunities to the revision petitioners to cross-examine PW 1 because, they have been impleaded as accused only on the basis of evidence of PW 1 and passed an order dated 17-03-2021 without following the procedure of law and fixed the case for Judgment on 24-03-2021. Under the circumstances, the revision petitioners deeply suspect that the said court is determined to hear and decide the case without giving

opportunity to the revision petitioners to cross-examine the informant at whose instance they have been impleaded as accused in the case.

**6.** Being highly aggrieved and dissatisfied, the revision petitioners preferred this revision on the following grounds amongst others:

### **GROUND**

**(i)** That the impugned orders dated 17-03-2021 and 24-03-2021 were illegal and liable to be set aside and the trial court miserably failed to appreciate the provisions of law in right perspective.

**(ii)** Furthermore, it is alleged that while passing the impugned orders, learned Magistrate did not apply judicial mind and did not allow the accused to cross-examine the informant. The impugned orders dated 17-03-2021 and 24-03-2021 allegedly caused prejudice to the interest of the revision petitioners as they have been impleaded later on, on the basis of evidence of PW 1 only by invoking power u/s 319 Cr.P.C. Since the court ignored the settled principles of law and overlooked the earlier order, the impugned orders are not tenable in the eye of law as the Magistrate did not apply judicial mind while passing the impugned orders.

**(iii)** It is alleged that the learned trial court had taken a pre-determined mind against the revision petitioners without any legal basis and made out a case for setting aside the orders dated 17-03-2021 and 24-03-2021 passed by learned SDJM(S), Sonitpur, Tezpur and stayed further proceeding till the case is disposed of on merit.

**7. Point for determination:**

1. Whether the impugned orders dated 17-03-2021 and 24-03-2021 passed by learned Sub Divisional

Judicial Magistrate(S), Sonitpur at Tezpur suffers from illegality, impropriety or incorrect and liable to be interfered by this court?

**Discussion, Decision and Reasons thereof.**

**8.** Learned counsel Imtiaz Ansari appearing for the revision petitioners vociferously contended that the learned court below is determined to dispose the case without giving sufficient opportunity to the revision petitioners to cross examine the informant/PW 1 on the basis of evidence of whom they were made accused in the case by the learned trial court. If the revision petitioners did not get opportunity to cross-examine the informant, their interest would be highly prejudiced or it may lead to their wrong conviction in the case without having any corroborative and credible piece of evidence emerged in the mouth of prosecution witnesses during trial. It is further contended that the bias mind set of the learned trial court is apparent on record by the impugned orders dated 17-03-2021 and 24-03-3021 which will greatly prejudice the interest of the accused persons unless said impugned orders of the learned trial court is not set aside or corrected.

**9.** Learned counsel Mr. M.C. Baruah, appearing for the state however contended that the impugned orders passed by the learned trial court is absolutely correct. There is no question of causing any prejudice to the interest of the accused persons. They were impleaded as accused in the case on the basis of sufficient materials emerged in the mouth of prosecution witnesses and in the face of such circumstances, the impugned orders requires no interference by this court.

**10.** Having heard the learned counsels appearing for both sides and on careful consideration of the order sheet of the case record, it transpires that the learned trial court impleaded the present revision petitioners/accused on the basis of evidence of informant/PW 1 that

the present revision petitioners were involved in the alleged offence. In the absence of other prosecution witnesses having not stated anything implicating against the present revision petitioners as accused in the case, therefore, if the revision petitioners do not get the opportunity to cross examine PW1- cum-informant then there is every chance of causing prejudice to the interest of the revision petitioners and this may lead to wrong conviction of the accused in the case. The fair trial is the right of every individual as enshrined in the constitution of India. Admittedly, the incident of theft occurred at night and none have seen the accused persons committing the offence but as deposed by PW 1 during the course of investigation subsequent to the incident of theft the present revision petitioners along with one Nayanjyoti Nath were found present in the house where the stolen articles were kept. Beyond this statement, there is no such evidence adduced by PW 1 that present revision petitioners/accused were involved in the commission of the alleged offence. Situated thus, if the revision petitioners do not get opportunity to cross-examine the informant on the basis of evidence of whom, they have been impleaded as accused by court by exercising power u/s 319 Cr.P.C. and in the absence of any corroborative evidence emerged from the mouth of other prosecution witnesses if cross-examination is not allowed, there is a chance of causing prejudice to the interest of the accused persons. The right of cross-examination is a valuable right of the accused persons to prove their innocence and they cannot be deprived from this valuable right without any justifiable cause.

**11.** Having perused the impugned orders dated 17-03-2021 and 24-03-2021, it appears that learned trial court closed the cross-examination of PW 1 recording that informant did not turn up even after many opportunities. However, order sheets reveals that only two orders have been found fixing for cross-examination of informant but record do not reveal that any steps have been taken for summoning the informant cum PW 1 for cross-examination.

Therefore, the impugned orders passed by learned Sub Divisional Judicial Magistrate (S), Sonitpur, Tezpur suffers from illegally and impropriety of not giving opportunity to the revision petitioners to cross-examine the informant-cum-PW 1 on the basis of whom revision petitioners have been impleaded as accused in the case.

**12.** In view of the foregoing discussion and reasons, this court is of the clear view that the impugned orders dated 17-03-2021 and 24-03-2021 passed by learned Sub Divisional Judicial Magistrate (S), Sonitpur, Tezpur cannot be allowed to sustain which requires interference by this court in revision.

**13.** Accordingly, both the impugned orders dated 17-03-2021 and 24-03-2021 are set aside and learned Sub Divisional Judicial Magistrate (S), Sonitpur, Tezpur is directed to summon the informant-cum-PW 1 and allow opportunity to the revision petitioners to cross examine PW 1 so that the case is disposed off in a fair and judicious manner.

**14.** In view of the foregoing discussions and reasons, the revision petition is allowed on contest.

**15.** Let a copy of this Judgment along with the case record be send back to the Court of learned Chief Judicial Magistrate, Sonitpur, Tezpur to be informed to Sub-Divisional Judicial Magistrate(S), Sonitpur, Tezpur for necessary action.

**16.** Judgment is signed, sealed and delivered in the open court on this 18<sup>th</sup> day of January, 2022.

**(C.B. Gogoi)**  
**Sessions Judge,**  
**Sonitpur: Tezpur.**

Dictated and corrected by me.

**(C.B. Gogoi)**  
**Sessions Judge,**  
**Sonitpur, Tezpur.**