

**HIGH COURT OF TRIPURA
AGARTALA
CrI. Rev. P. No. 05 of 2026**

Basanta Debnath,
S/O Manindra Debnath,
Of Simna Sundertilla,
P.O. Mohanpur, P.S. Sidhai,
Mohanpur, Tripura.

---- **Revision Petitioner(s)**

Versus

1. The State of Tripura,

2. Smt. Shilpi Debnath,
W/o Basanta Debnath,
Of Simna Sundertilla,
P.O.-Mohanpur, P.S. Sidhai,
Mohanpur, Tripura.

3. Miss Pipasha Debnath,
D/o Shyamal Debnath,
Of Simna Sundertilla,
P.O.-Mohanpur, P.S. Sidhai,
Mohanpur, Tripura.

---- **Respondent(s)**

For Revision petitioner(s) : Miss Varsha Podder, Adv.

For respondent(s) : Mr. Raju Datta, PP.

Date of hearing &
Date of delivery of judgment : 16.03.2026

Whether fit for reporting : **No**

HON'BLE MR. JUSTICE BISWAJIT PALIT
Judgment & Order (Oral)

Heard Learned Counsel Smt. Varsha Podder, appearing on behalf of the accused petitioner as well as Mr. Raju Datta, Learned PP appearing on behalf of the State-respondent.

2. This criminal revision petition filed under Section 397(1) of Cr.P.C. read with Section 401 of Cr.P.C. corresponding to section

438(1) & 442 of BNSS Act, 2023 challenging the order dated 06.01.2025 passed by Ld. Special Judge (POCSO) West Tripura, Agartala in connection with Case no. Spl (POCSO) 33/2020.

3. Taking part in the hearing Learned Counsel Smt. Podder, drawn the attention of the Court that this case is at the stage of hearing of argument now and the petitioner accused submitted one application under Section 311 of Cr.P.C. for recalling of prosecution witness No.2 & 3 on the ground that on the day when those witnesses appeared, Learned Counsel for the accused in custody sought time to cross examine them as he was not prepared but the Learned Court below did not consider the request and proceeded to record the evidence of those witnesses. It was further submitted by Learned Counsel that the accused is a poor person.

4. It was further submitted that although the case was registered in the year 2020 but during four years in spite of issuing repeated summons the victim and her mother did not turn up before the Court. But all on a sudden on the alleged day the witnesses turned up and the Learned Counsel for the accused petitioner was not ready to cross examine the witnesses but the Learned Court below did not consider the same and recorded the evidence.

5. Furthermore, according to Learned Counsel the oral evidence of the witnesses are contrary to the judicial statements made by those witnesses before this Court and if the accused

petitioner is not given the scope to cross examine the witnesses then he will be seriously prejudiced. So for the sake of justice Learned Counsel urged for allowing the prayer.

6. Learned PP Mr. Datta, on the other hand opposed the submission and submitted that conduct of the accused was not at all satisfactory and now he is trying to improve his case by recalling prosecution witnesses.

7. Heard both the sides at length and perused the relevant paragraphs.

8. It is not the case of the accused petitioner that the petitioner accused partly cross-examined PW Nos.2 & 3. The petitioner filed the prayer before the Learned Trial Court under Section 311 of Cr.P.C. For the sake of convenience, let us reproduce here in below the relevant provision of Section 311 of Cr.P.C. which reads as under:-

"311. Power to summon material witness, or examine person present.

- Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case."

From the aforesaid provision, it appears that the legislature has given scope to the Court below to recall any witness exercising power provided under the said Section.

9. Here in the case at hand, considering the nature and gravity of the offence and the contradiction of the statement made by the witnesses PW Nos. 2 & 3 during their judicial statement recorded under Section 164(5) and also their subsequent statements before the Court, it appears to this Court that if the accused petitioner is not given the scope to cross examine those witnesses, in that case there is every chance that the present petitioner may be prejudiced.

10. So considering all, it appears to this Court that the petitioner should be given the scope to cross examine those witnesses.

11. In the result, the petition filed by the petitioner is hereby allowed.

12. The matter is remanded back to the Learned Trial Court below i.e. Ld. Spl. Judge (POCSO) West Tripura, Agartala with a direction to call upon PW Nos.2 & 3 and to allow the accused to cross examine those witnesses for the sake of justice.

13. The accused shall appear before the Court on or before the next date for passing appropriate order(s) by the Learned Trial Court. However, if on the next date, which will be fixed by the Learned Trial Court, it appears that the accused remains absent or in unrepresented by any lawyer in that case his right to cross examine those witnesses shall be extinguished forever. After recording of those witnesses the Learned Trial Court shall proceed in accordance with law to deliver judgment.

