

IN THE HIGH COURT AT CALCUTTA

Criminal Revisional Jurisdiction

Before:

The Hon'ble Mr. Justice Jay Sengupta

C.R.R. 1844 of 2020

Rafikul Miah @ Rafiqul Miah

Vs.

The State of West Bengal & Anr.

For the Petitioner : Mr. Sabir Ahmed,
Mr. Shraman Sarkar,
Mr. Arpan Saha,
Mr. Majibur Ali Naskar.

Heard on : 21.12.2020

Judgement on : 21.12.2020

Jay Sengupta, J. :

1. This is an application challenging an order dated 05.09.2020 passed by the learned POCSO Court-cum-Additional Sessions Judge, 2nd Court, Cooch Behar under Sections 302, 376A read with Section 201 of the Penal Code and Section 6 of the POCSO Act.
2. Learned Counsel appearing on behalf of the petitioner submits as follows.
The petitioner is one of the accused in this case. In the course of trial, on 03.08.2017 one Atiyar Mia was examined as PW 2 and was declared

hostile. He was cross-examined by the prosecution. The learned defence of the co-accused declined to cross-examine him. Subsequently, the present petitioner filed an application under Section 311 of the Code seeking recalling of the said witness for proper cross-examination by him. It is the contention of the petitioner that the cross-examination by the prosecution has significantly prejudiced the present petitioner and the petitioner ought to extensively cross the witness. The probative value of the cross-examination by the prosecution is not much and the said issue ought to be settled at the earliest. Otherwise, the same will cause irreparable harm and prejudice to the present petitioner.

3. I have heard the submissions of the learned Counsel appearing on behalf of the petitioner and have perused the revision petition.
4. It appears from the records that the present petitioner was granted ample opportunity to cross-examine the witness namely, PW2 and in fact, his defence cross-examined him. Surprisingly, at a subsequent stage an application for recalling was filed on behalf of the present petitioner making, among other things, an averment that the witness was inadvertently not cross-examined on behalf of the petitioner.
5. It is cardinal principle of law that in case a party to a litigation alleges wrong recording of evidence it has to be brought to the notice of the learned

recording Court on the very day itself or at least soon thereafter when the matter is still fresh in the mind of the Judge. On this, a reference may be made to the ratio laid down by the Hon'ble Apex Court in State of Maharashtra vs. R.S. Nayak, AIR 1982 SC 1249. The same was not done here. In fact, in the instant case the issue was raised after about 2 ½ years from the recording of evidence. The records, on the other hand, make it apparent that the said witness was cross-examined by the present petitioner.

6. Moreover, the evidentiary value of the cross-examination of a hostile prosecution witness by the prosecution is not to be decided at this stage. This has to be done by the learned Trial Court at the conclusion of the trial.
7. In view of the above, I do not find any merit in this application. Accordingly, the revisional application is dismissed.
8. However, there shall be no order as to costs.
9. In the interest of justice, the learned Trial Court is requested to conclude the trial as expeditiously as possible without granting any unnecessary adjournment to any of the parties, keeping in mind the statutory mandate contained in the special Act about expeditious disposal of a proceeding.

10. With these observations, the revisional application is disposed of.

11. Urgent photostat certified copy of this order may be supplied to the parties expeditiously, if applied for.

(Jay Sengupta, J.)

SI.27/NB