

CRR No. 2410 of 2021

In Re : Gopal Santra

.....Petitioner.

In the matter of : An application under Section 482 read with
Section 483 of the Code of Criminal
Procedure.

Mr. Fasiur Rahman Molla
Ms. Slhirsha Chakraborty

...for the petitioner.

Mr. S. G. Mukherjee, Id PP,
Mr. Saryati Datta

...for the State.

Liberty is granted to the petitioner to amend the cause
title and implead the State of West Bengal as an opposite party.

The subject matter of the revisional application relate to
the order dated 09.11.2021 allowing the application under
Section 311 of the Code of Criminal Procedure filed at the
instance of the accused person.

Learned advocate appearing for the petitioner draws the
attention of this Court to the order dated 09.11.2021 and submit
that neither the application under section 311 of the Code of
Criminal Procedure shows any cogent reason for recalling the
witnesses nor the learned court recorded any reasons for recalling
of P.W1 (Gopal Santra) and P.W 12 (Dr. Arnab Mallick).

It has been pointed out that the application under Section 311 Cr.Pc do not adhere to the principles of Law set out by the Hon'ble Apex Court for recalling of the witnesses.

Mr. Mukherji, learned Public Prosecutor draws the attention of this court to an application filed by the Public Prosecutor on 10th November 2021 and submits that there was specific objection on behalf of the State. However, it was recorded as 'no objection'.

Change of counsel / advocate is no ground for allowing an application under Section 311 of the Code of Criminal Procedure and this has been repeatedly pronounced by the Hon'ble Supreme Court.

Accordingly, the learned trial court is directed that in case the learned counsel appearing for the accused/defense is interested to recall any witness and the Court thinks that the same is warranted for the ends of justice, in that case specific issues / questions/ omissions which will prejudice the accused must be brought to the notice of the court under Section 311 of the Code of Criminal Procedure for considering the same.

The learned trial court is directed to adhere to the principles set out in the matter of ***Rajaram Prasad Yadav -vs- State of Bihar and anr.*** reported in ***(2013) 14 Supreme Court Cases 461*** and thereafter consider the application under Section 311 of the Code of Criminal Procedure.

Needless to state that I have not gone into the merits of the case and as to whether the application under Section 311 of

the Code of Criminal Procedure was required for the ends of justice but this court has taken a decision in the manner in which section 311 of the Code of Criminal Procedure was allowed against the norms as has been pronounced by the Hon'ble Supreme Court.

As in spite of service, none appears on behalf of the opposite parties, I am not inclined to grant any further adjournment. The learned advocate for the accused person would file before the learned trial court a fresh application under Section 311 of the Code of Criminal Procedure by adhering to the principles set out in the judgement of *Rajaram Prasad Yadav (Supra)*. The learned advocate for the accused persons would be at liberty to file within a period of 4(four) weeks from date.

The learned trial court, after granting opportunity to the Public Prosecutor, would dispose of the same by 20th January 2022.

Having regard to the fact that only 3 witnesses are left, the trial court must take steps so that the trial of the case is concluded by June, 2022.

With the aforesaid observations, the revisional application being CRR 2410 of 2021 is disposed of.

The order dated 09.11.2021 and all consequent orders relating to the recording of the witnesses are hereby set aside.

Connected applications, if any, are consequently disposed of.

The Registrar (Judicial Service) is directed to communicate this order to the learned trial court within a week from date.

All parties are to act on the server copy of this order duly downloaded from the official website of this court.

(Tirthankar Ghosh, J.)