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**CIRCUIT BENCH OF CALCUTTA HIGH COURT
AT JALPAIGURI**

CRR 26 of 2020

Rakesh Rai & Anr.
Vs.
The State of West Bengal.

Ms. Rima Sarkar
...for the Petitioners.

Mr. Aditi Shankar Chakraborty,
Mr. Aniruddha Biswas
...For the State

The impugned order No. 146 dated 19th September, 2019 passed by the learned Additional District And Sessions Judge, 2nd Curt, Siliguri in Sessions Case No.26(S)/2004 rejecting the prayer of the petitioners to recall witness, like PW-11 is subject of challenge in this case.

Ms. Rima Sarkar, learned Advocate representing the petitioners submits that the prayer for recall was allowed previously by the order dated 25th June, 2019 and after the same being allowed, the witness though appeared, could not be allowed to be cross-examined merely on the ground of failure of the petitioners to produce the certified copy of the documents for making confrontation to witness in the proposed cross-examination. It is contended by the learned Advocate for the petitioners that this is a case under Section 302 I.P.C. and the valuable right to cross-examine has been denied by the learned Trial Court simply for the failure to produce the certified copy of the documents, necessary for making confrontation to a witness during evidence in cross-examination. It is also contended that by the order dated 25th

June, 2019, the prayer for recalling was allowed upon making submission of photocopy of some deposition previously adduced by referred witness in different Court, which could have been adequately taken care of, instead of rejecting the recall application. Upon taking such points, learned Advocate for the petitioners proposed that the petitioners have suffered serious prejudice for the valuable right of cross-examination of petitioners being denied.

Mr. Aniruddha Biswas, learned Advocate representing the State submits that the demand of the law is that a witness is required to be confronted with a document in cross-examination for establishing the contradiction, but in this case, this has not been done so. Admittedly, the photocopy of deposition sheets of some witnesses were produced.

It cannot be disputed that the requirement of law is very clear as regards establishing contradictions. At this stage of hearing it is given to understand that the Trial Court has already closed the prosecution case and fixed date for examination of accused persons under Section 313 Cr.P.C. on 4th April, 2021.

Having considered the submission of both sides and bearing in mind the materials placed in the record, it appears that by order dated 25th June, 2019, the Trial Court already allowed recalling of some witnesses, as specifically shown in such order. The learned court below being oblivious of the previous order dated 25th June, 2019 and without making consideration of the photocopy of the documents produced in connection with the case, rejected the prayer for recall of witness. The learned court below ought to have proceeded allowing recall without insisting upon production of the certified copy of

deposition sheets to such witness for confrontation, who was allowed to be recalled by way of further cross-examination. The impugned order dated 19th September, 2019 rejecting the recall application filed by the petitioners is, thus set aside. Consequently, the subsequent order fixing for examination of accused persons under Section 313 Cr.P.C. is also set aside.

Learned Advocate for the petitioners is directed to finish the cross-examination of PW-11 and such other witnesses, if any still left un-recalled, as specifically allowed by order dated 25th June, 2019 within a period of one month from 4th April, 2021.

The learned court below is further directed to allow cross-examination restricting to witnesses in terms of the recall application, already allowed on 25th June, 2019 taking support and co-operation of the learned Public Prosecutor as well as the defence counsel, and if necessary by resorting to steps available under Section 309 Cr.P.C.

After the cross-examination is finished, and the case is otherwise ready so far as the witnesses, proposed to be examined by the Prosecution, date may be fixed for examination of accused persons under Section 313 Cr.P.C. The Trial Court is further directed to conclude the trial of this case expeditiously as possible, subject to the convenience of the Trial Court.

Learned defence counsel is also requested to co-operate with the learned Trial Court so that expeditious disposal could be ensured in this case.

With the above direction and observation, the revisional application is disposed of.

Urgent Photostat certified copy of this order, if applied for, be given to the parties upon compliance of all formalities.

(Subhasis Dasgupta, J.)