

Form No. J(2)

IN THE HIGH COURT AT CALCUTTA

Criminal Revisional Jurisdiction

Appellate Side

Present:

The Hon'ble Justice Jay Sengupta

CRR 730 of 2022

Aizul Laskar @ Azizul Laskar & Ors.

Vs.

The State of West Bengal

For the Petitioners : Mr. Sabir Ahmed
Mr. Mujibar Ali Naskar
Mr. T. Ahmed

For the State : Mr. Madhusudan Sur, Ld. A.P.P.
Mr. Dipankar Paramanick

Heard on : 01.04.2022

Judgment on : 01.04.2022

Jay Sengupta, J.:

This is an application challenging an order dated 02.02.2022 passed by the learned Additional Sessions Judge, 1st Court, Seladah, North 24-Parganas, thereby rejecting the petition filed by the accused petitioner under Section 311 of the Code for recalling of PW39 in connection with Sessions Trial No. 01(08) of 2012.

Learned counsel appearing on behalf of the petitioners submits as follows. The petitioners are the accused in this case. During trial, the petitioners had prayed for correction of evidence of PW39. It was

further submitted before the learned trial court that unless that happened, the prosecution could not further cross-examine PW39. In the meantime, certain other issues also cropped up. The petitioners first preferred a revisional application before this Court being CRR No. 255 of 2021 with the prayer that the two applications filed by the petitioners, one for correction of the evidence of PW 39 and the other for recalling of PW 38 should be disposed of. By an order dated 23.08.2021 passed in the said revision, the application was allowed and the learned trial court was directed to dispose of the two applications. When the matter went before the learned trial court, the learned trial court rejected the prayer for recalling and was of the view that the issue of correction could be taken up at the stage of arguments. Thereafter, a second revisional application filed by the petitioners being CRR No. 2440 of 2021 seeking recalling of PW 38 for cross-examination. By an order dated 22.12.2021, the said prayer was allowed. Although, the PW 39 was cross-examined on a few occasions, the same could not be concluded and it was categorically submitted on behalf of the defence that unless the correction was effected, the cross-examination of the defence would not be in a position to cross-examine PW 39. Yet, the evidence was closed at that stage by the learned trial court. A date has been fixed for argument on 2nd April, 2022. In the interest of justice, the petitioner should be allowed at least a single days' opportunity to cross-examine the

witness namely, P.W.39. The petitioners undertake to cross-examine the PW 39 regardless of whether the evidence of PW 39 recorded thus far is corrected or not.

Learned counsel appearing on behalf of the State submits as follows. First, the defence had ample opportunity to cross-examine the witness namely, PW 39. In fact, cross-examination was done on the number of occasions. Secondly, in the subsequent revisional applications the petitioners had adequate opportunity to take up the point regarding recalling of PW 39. But, the same was not done. It was only after an order was passed for recalling PW 38 that the petitioners prayed for recalling of PW 39.

I have heard the submissions of the learned counsels appearing on behalf of the petitioners and the State and have perused the revision petition.

It is true that the petitioners had moved two revisional applications before this Court and at least in the second revisional application, the issue of recalling of PW 39 could have been taken up by the petitioners. At the same time it is also a fact that the defence had clearly stated that it could cross-examine PW 39 only after the evidence of PW 39 was corrected. That issue remained pending.

Whether the petitioners have waited all this long to bide some more time by not taking up the issue of recalling of PW 39 in the second revision or not, they nevertheless have a very important right

to cross-examine the witness, namely, PW 39. It is an integral part of their right to a fair trial.

In view of the above and in the interest of justice, I set aside the closure of evidence of PW 39 and direct the learned trial court to grant a single day's opportunity to the petitioners to cross-examine PW 39 by fixing a date for such purpose in the month of April, 2022. The cross-examination would be done regardless of the purported correction of evidence of PW 39 as had earlier been prayed for on behalf of the defence.

After the cross-examination of PW 39 is concluded, the learned trial court shall proceed with the trial from the present stage and conclude the proceeding as expeditiously as possible.

With these observations, the revisional application is disposed of.

Urgent photostat certified copies of this judgment may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

All parties shall act on a server copy of this order, duly downloaded from the official website of this Court.

(Jay Sengupta,J.)