

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

IA No.:CRAN/2/2022

In

CRR 843 of 2022

Jayanta Singha Roy

-Vs-

The State of West Bengal & Anr.

For the Petitioner: Mr. Jayanta Narayan Chatterjee, Adv.,
 Mr. Somopriyo Chowdhury, Adv.,
 Ms. Jayashree Patra, Adv.,
 Mr. Suvrodeep Koley

For the Opposite Party No.2:
 Mr. Himanshu De, Sr. Adv.,
 Mr. Navanil De, Adv.,
 Mr. Subhrajit Dey, Adv.,
 Mr. Srinjan Ghosh, Adv.

For the State: Mr. Saswata Gopal Mukherjee, Adv.,
 Mr. Joydeep Roy, Adv.,
 Ms. Sujata Das, Adv.

Heard on: 5th July, 2022.

Judgment on: 11th July, 2022.

BIBEK CHAUDHURI, J. : –

1. Challenging legality, validity and propriety of an order being No.117 dated 4th March, 2022 passed by the learned Additional Sessions Judge, 2nd Court at Serampore in Sessions Trial No.42 of 2011 allowing an

application under Section 311 of the Cr.P.C filed by the prosecution, the accused has filed the instant criminal revision.

2. It is not in dispute that on the basis of a written complaint submitted by the opposite party No.2, Jangipara Police Station Case No.31 of 2001 dated 13th April, 2001 was registered under Section 147/148/149/342/448/325/300 of the Indian Penal Code. It is alleged in the FIR that the petitioner along with his associates assaulted the sons of the defacto complainant with deadly weapons and both of them succumbed to their injuries inflicted by the petitioner and his associates. On completion of investigation police submitted charge-sheet against the petitioner and other accused persons on 31st December, 2002 under Section 342/448/325/32 of the IPC. Finally on 11th August, 2011 the trial court framed charge against the petitioner and other accused persons under Section 148/149/448/302 of the IPC. During this long period of about 11 years prosecution was able to examine 16 witnesses as per the charge-sheet and only examination of the Investigating Officer is due to be recorded. At this stage the petition was filed on behalf of the prosecution in the court below stating, inter alia, that one Gora Chand Singha Roy, son of Hara Singha Roy, since deceased in the incident under trial is the eyewitness of the occurrence and examination of the said Gora Chand Singha Roy is absolutely necessary for just decision of the case.

3. It is contended by the petitioner that the said Gora Chand Singhs Roy was not cited as a witness by the prosecution in the charge-sheet. He was aged about eight years at the time of alleged incident and his name

does not transpire during investigation or in course of evidence from the witnesses that he was an eyewitness of the occurrence. It is alleged by the petitioner that the prosecution wants to examine Gora Chand Singha Roy as a witness on behalf of the prosecution only to fill up the lacuna in the prosecution case further examination of all the charge-sheeted witnesses except the Investigating Officer. The petitioner has further alleged that during evidence, PW1, PW5 and PW6 stated on oath that the said Gora Chand Singha Roy was present at the place of occurrence at the time of alleged incident. However, the said witnesses did not make any statement with regard to presence of the said Gora Chand Singha Roy before the Investigating Officer under Section 161 of the Cr.P.C. Therefore, the statements of PW1, PW5 and PW6 in course of their evidence are conscious departure from their previous statement under Section 161 of the Cr.P.C. The petitioner further pleaded that the said Gora Chand Singha Roy is at present a man of 30 years old. Therefore, the prosecution is eager to examine the above named person only to fill up the lacuna in the evidence of the witnesses on behalf of the prosecution.

4. Accordingly, the petitioner has prayed for setting aside of the impugned order dated 4th March, 2022.

5. Mr. Jayanta Narayan Chatterjee, learned Counsel for the petitioner has made similar submission as contended in the petition. He submits that the prosecution wants to examine the said Gora Chand Singha Roy only to fill up the lacuna in the prosecution case. PW1, PW5 and PW6 did not state to the Investigating Officer that the said Gora Chand Singha Roy

was present at the time of occurrence. It is also submitted by the learned Advocate for the petitioner that the learned trial judge wrongly placed reliance on **Manju Devi vs. State of Rajasthan & Anr.** reported in **(2019) 6 SCC 203**. It is also submitted by him that the learned trial judge also failed to understand the ratio of **Ratanlal vs. Prahalad Jat & Ors.** reported in **(2017) 9 SCC 340**.

6. Learned Advocate for the opposite party No.2/defacto complainant has supported the order dated 4th March, 2022 passed by the court below.

7. Mr. Saswata Gopal Mukherjee, Public Prosecutor, High Court at Calcutta on the other hand submits that Section 311 of the Code of Criminal Procedure contains two parts. The first part says that any court may, at any stage of any inquiry, trial or other proceeding, summon any person as a witness, or examine any person in attendance, though not summoned as a witness or recall and reexamine any person already examined. This part of the provision contained in Section 311 of the Code is discretionary in nature. Subsequently, in the same Section it is provided that the court shall summon and examine or recall and reexamine any such person if his evidence appears to it to be essential to the just decision of the case. The second part of the above noted provision is obligatory and it is the bounden duty of the court to examine any person, though not cited as witness in the charge-sheet to examine if his evidence appears to it to be essential to the just decision of the case.

8. Next he draws my attention to the written complaint which is part of the revisional application. In the written complaint it is stated by the

defacto complainant that when the accused persons were assaulting two sons of the defacto complainant, she and her youngest grand-son (son of Late Hara Singha Roy) fell down on the feet of the accused persons and begged for the lives of the sons of the defacto complainant. But the accused persons pushed them back after assaulting them. Thus, from the FIR it is ascertained that the youngest grand-son of the defacto complainant namely Gora Chand Singha Roy who is the son of Late Hara Singhray was present at the time of occurrence. Therefore, his evidence is absolutely necessary for just decision of the case. The learned trial judge did not commit any error in allowing the petition under Section 311 of the Code permitting the prosecution to examine Gora Chand Singh Roy before examination of the Investigating Officer. It is also submitted by him that the petitioner will not be prejudiced because he will get chance of cross examination of the said witness as well as the Investigating Officer of the case. Therefore, no prejudice will be caused to the petitioner.

9. Factual aspect of the matter leading to filing of the application under Section 311 of the Code of Criminal Procedure is not in dispute. Though, the learned Advocate for the petitioner tried to convince this Court stating, inter alia, that presence of Gora Chand Singha Roy at the place of occurrence could not be ascertained by the Investigating Officer during investigation of the case, it is on record that in the written complaint the defacto complainant clearly stated that the said Gora Chand Singha Roy who was a child of about eight years at the time of alleged incident and the defact complainant prayed for the lives of the

sons of the defacto complainant who were murdered by the accused persons touching their feet but they pushed them back assaulting them. PW1, PW5 and PW6 stated in their evidence in court that the said Gora Chand Singha Roy was present at the scene of occurrence and saw the incident. Though, the learned Advocate for the petitioner submits that the above named witnesses did not state the said fact in their statement recorded under Section 161 of the Cr.P.C, this Court only records that the statement of a witness made on oath before the court during trial is the material evidence and omission on their part to state the name of Gora Chand Singha Roy as the eyewitness of the occurrence shall be considered at the time of final hearing of the case by the court below while considering the issue if such omission amounts to material contradiction or not.

10. In **V.N Patil vs. K. Niranjan Kumar & Ors** reported in **(2021) 3 SCC 661**, the Hon'ble Supreme Court reiterated the object underlying Section 311 of the Code of Criminal Procedure. Paragraph 14 to 17 of the said report is relevant and recorded hereinbelow:-

14. The object underlying Section 311 CrPC is that there may not be failure of justice on account of mistake of either party in bringing the valuable evidence on record or leaving ambiguity in the statements of the witnesses examined from either side. The determinative factor is whether it is essential to the just decision of the case. The significant expression that occurs is "at any stage of any inquiry or trial or other proceeding under this Code". It is, however, to be borne in mind that the discretionary power conferred under Section 311 CrPC has to be exercised judiciously, as it is always said "wider the power, greater is the necessity of caution while exercise of judicious discretion."

15. *The principles related to the exercise of the power under Section 311 CrPC have been well settled by this Court in Vijay Kumar Vs. State of Uttar Pradesh (SCC p141, para 17)*

“17. Though Section 311 confers vast discretion upon the court and is expressed in the widest possible terms, the discretionary power under the said section can be invoked only for the ends of justice. Discretionary power should be exercised consistently with the provisions of the Code and the principles of criminal law. The discretionary power conferred under Section 311 has to be exercised judicially for reasons stated by the court and not arbitrarily or capriciously. Before directing the learned Special Judge to examine Smt Ruchi Saxena as a court witness, the High Court did not examine the reasons assigned by the learned Special Judge as to why it was not necessary to examine her as a court witness and has given the impugned direction without assigning any reason.”

16. *This principle has been further reiterated in Mannan Shaikh and Others Vs. State of West Bengal and thereafter in Ratanlal Vs. Prahlad Jat and Swapan Kumar Chatterjee Vs. Central Bureau of Investigation. The relevant paragraphs of Swapan Kumar Chatterjee are as under: (Swapan Kumar Chatterjee case, SCC p.331, paras 10-11)*

“10. The first part of this section which is permissive gives purely discretionary authority to the criminal court and enables it at any stage of inquiry, trial or other proceedings under the Code to act in one of the three ways, namely, (i) to summon any person as a witness; or (ii) to examine any person in attendance, though not summoned as a witness; or (iii) to recall and reexamine any person already examined. The second part, which is mandatory, imposes an obligation on the court (i) to summon and examine or (ii) to recall and reexamine any such person if his evidence appears to be essential to the just decision of the case.

11. It is well settled that the power conferred under Section 311 should be invoked by the court only to meet the ends of justice. The power is to be exercised only for strong and valid reasons and it should be exercised with great caution and circumspection. The court has vide power under this section to even recall witnesses for re-examination or further examination, necessary in the interest of justice, but the same has to be exercised after taking into consideration the facts and circumstances of each case. The power under this provision shall not be exercised if the court is of the view that the application has been filed as an abuse of the process of law.”

17. The aim of every Court is to discover the truth. Section 311 CrPC is one of many such provisions which strengthen the arms of a court in its effort to unearth the truth by procedure sanctioned by law. At the same time, the discretionary power vested under Section 311 CrPC has to be exercised judiciously for strong and valid reasons and with caution and circumspection to meet the ends of justice.

16. Almost a similar contention was raised by the learned Counsel for the petitioner before a Coordinate Bench of Delhi High Court in CRL.M.C 1203/2022 and CrI.M.A 5222/2022 [**Dr. Pradeep Dutta vs. State (NCT of Delhi) & Ors**], decided on 2nd May, 2022. Before the Coordinate Bench at Delhi High Court it was argued that the name of person does not find mention in the list of witness appended with charge-sheet submitted before the trial court by the prosecution under Section 173 of the Code of Criminal Procedure. Had the person who was intended to be examined under Section 311 of the Cr.P.C, was an eyewitness, the Investigating Officer should have taken care to record his statement under Section 161 of the Code of Criminal Procedure.

17. On this score the Court held that in such a case it is the duty of the prosecution to bring on record the relevant facts and circumstances and to apply to the court for consideration of invoking the power under Section 311 of the Code and to examine such persons as witnesses. The provision in Section 311 of the Code emphasises on the principle of providing substantial justice to the parties. In that context, parties means both accused and the complainant. Neither category of the persons are to be excluded while considering the question of advancement of substantial justice. If the prosecution conducted by the learned Prosecutor fails to

bring on record and to the notice of the Court the relevant facts in support of the motion to examine additional witnesses, then the informant/complainant may bring it to the notice of the Court either by providing appropriate instruction to the learned prosecutor and in the event of his unwillingness by filing appropriate application supported by affidavit. That is the amplitude/arena of jurisdiction vested in a Court under Section 311 of the Code. It is not to be circumvented or curtailed by any narrow interpretation.

18. Considering the underlying object of Section 311 of the Code of Criminal Procedure along with the factual position of this case, this Court is of the view that the learned trial judge did not commit an error in passing the impugned order dated 4th March, 2022 in Sessions Trial No.42 of 2011.

19. In view of the above discussion, the instant criminal revision is dismissed.

20. Since the trial of the case is continuing for about 11 years, the learned trial judge is directed to examine Gora Chand Singha Roy as a court witness within one month from the date of communication of this order. The learned trial judge is also directed to conclude the trial of the case by 30th September, 2022.

(Bibek Chaudhuri, J.)