

Form J(1)

**IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
Appellate Side**

**Present :
The Hon'ble Justice Bibek Chaudhuri**

CRR 1904 of 2022

**Zahid Salim
Vs.
The State of West Bengal & Anr.**

**For the petitioner : Mr. Tapas Kumar Ghosh, Adv.,
Mr. Tanmoy Chowdhury, Adv.**

**For the State : Mr. Anwar Hossain, Adv.,
Ms. Manisha Sharma, Adv.**

Judgement on : 16.08.2022.

Bibek Chaudhuri, J.

The accused/petitioner has been facing trial under the charge of Section 376A of the Indian Penal Code read with Section 6(1) of the POCSO Act in Sessions Trial (Spl.) No. 28/2021 in the Court of the Learned Additional Sessions Judge-cum-Special Judge (POCSO) at Chandernagore, Hooghly. After examination-in-chief of the *de facto* complainant of the aforesaid case, an application was filed on behalf of the accused/petitioners praying for deferment of cross-examination of P.W. 1 till the examination-in-chief of charge-sheeted witness nos. 2 and 3, being the victim and her mother would be over.

The Learned Trial Judge passed a detailed order on 18th May, 2022 and finally held as hereunder:-

"If the examination-in-chief of witness P.W. – 1 is deferred until examination-in-chief of the victim girl and her mother is completed then there will be a delay in concluding the trial of this case for the offence under the POCSO Act that if deferral of the cross-examination of witness present today is allowed in view of Section 309(I) of Cr.P.C., then there would be a huge delay in concluding the trial of this case relating to the offence under the POCSO Act. That there is also a mandate to conclude the trial of the offence relating to the POCSO Act within a certain period. There is also a possibility of causing threat to the witnesses as well as the witnesses being gained over in course of trial of this case".

Section 231 of the Code of Criminal Procedure deals with procedure for recording of evidence of the witnesses for the prosecution. The provision runs thus: -

231. Evidence for prosecution. – (1) on the date so fixed, the Judge shall proceed to take all such evidence as may be produced in support of the prosecution.

(2) The Judge may, in his discretion, permit the cross-examination of any witness to be deferred until any other witness or witnesses have been examined or recall any witness for further cross-examination".

Plain reading of the above provision suggests that it is the discretion of the Trial Court to defer cross-examination of a witness till examination of some other charge-sheeted witnesses on the ground predominantly that if one witness is

cross-examined before examination of other related witnesses, there is every possibility of disclosure of defence. If defence is disclosed during cross-examination of one witness, remaining witnesses on behalf of the prosecution standing on the same line or status may have the opportunity to fill up the lacuna in the prosecution case and thereby frustrate the defence.

In the case in hand the defence took out an application for deferment of cross-examination of P.W. 1 till examination-in-chief of P.W. 2 and P.W. 3 on the ground of possibility of disclosure of defence.

From the impugned order this Court does not find any averment on behalf of the prosecution that if cross-examination of P.W. 1 was deferred there might be possibility of undue influence of witnesses, possibility of threats to witnesses, possibility of loss of memory of witnesses, possibility of delay in the trial and so on. In the absence of such specific plea which might have been taken by the prosecution in the line of the guidelines laid down by the Hon'ble Supreme Court in State of Kerala –Vs.- Rashid reported in 2019(1) AICLR 316 (SC), the prayer made on behalf of the defence for deferral of cross-examination of P.W. 1 till examination-in-chief of P.W. 2 and 3 ought to have been allowed.

For the reasons stated above, this Court is of the view that the Learned Trial Judge acted illegally and failed to exercise its jurisdiction vested under the law in rejecting the application filed on behalf of the petitioner/accused.

Accordingly, the impugned order is set aside. The instant revision is **allowed** on contest.

The Learned Trial Judge is directed to permit the defence to cross-examine P.W. 1 after conclusion of examination-in-chief of the victim and her mother.

It is also made clear that at least P.W. 1 and the victim shall be cross-examined in one sitting of the judicial function of the Court below.

The parties are at liberty to act on the server copy of the order.

(Bibek Chaudhuri, J.)

Srimanta, A.R.(Ct.)
Item No. 82.