

September 7, 2022
ARDR
(139) (M/L)

CRR 2997 of 2022

Debdip Acharya @ Tunan Acharya
Vs.
State of West Bengal & anr.

Mr. Subir Ganguly,
Mr. Sumanta Ganguly,

...for the Petitioner.

Mr. Prasun Kumar Dutta,
Md. Kutubuddin,
Mr. Santanu Deb Roy,

...for the State.

Trial of sessions trial no.39 of 2015 was directed to be held by this Court in CRR 1970 of 2017 following the mandate of Section 309 of the Code of Criminal Procedure and the trial Court was further directed to conclude the trial as expeditiously as possible preferably within a year from the next date fixed for recording. Such order was passed by this Court on 20th June, 2017.

It is pointed out by the learned advocate for the petitioner that the charge was framed against the accused persons under Section 498A/304B of the Indian Penal Code on 26th August, 2015 and initially trial started on and from 23rd November, 2015. Till date only PW1 was examined in part. On 20th July, 2017, PW 1 Shankar Bairagi was examined in chief, but on the prayer of the defence cross-examination of PW 1 was deferred till examination-in-chief of other witnesses, viz. CSW 8, Jaydeb Bairagi, CSW 10 Sudesh Baigari, CSW 11, Smt. Uma Bairagi and CSW 15 who is the daughter of the victim. The

certified copy of the order sheets of the trial court shows that after 29th July, 2017, the trial Judge went on fixing dates after dates, but prosecution has failed to produce the witnesses on behalf of the prosecution.

It is needless to say that in a case initiated on police report it is the duty of the learned Public Prosecutor or the Public Prosecutor in charge to take step for production of witnesses. It is his duty to prepare summons in the name of the witnesses, get it signed from the Presiding Officer and sent it to the Investigating Officer, as the case may be. It is a misconception that whenever the witnesses are not coming to depose in any criminal case the trial Courts are blamed and criticized. I make it clear that it is not the duty of the trial Court to produce the witnesses on behalf of the prosecution. The role of the trial Courts in this regard is like to facilitate by issuing summons and witnesses warrants etc. in the names of the witnesses produced by the learned Public Prosecutor. From the record, I do not find any material as to whether the learned Public Prosecutor submitted requisition before the learned trial Judge for issuance of summons or witnesses warrants etc. At the same time, I am not unmindful to note that in spite of specific direction of the Supreme Court, trial of the case could not be concluded as yet.

Considering the averments made in the instant application, I am of the view that the revisional application can be disposed of here and now with the assistance of the learned Public Prosecutor in charge.

Mr. Prasun Kumar Dutta with Mr. Md. Kutubuddin, learned Advocates, are requested to assist the Court on behalf of the State.

Mr. Dutta does not dispute the observation made by this Court hereinabove regarding the process of production of witnesses in a criminal trial.

Therefore, the instant revision is disposed of directing the trial Court to fix schedule for examination of witnesses under Section 309 of the Code of Criminal Procedure. The Public Prosecutor is under obligation to issue summons upon the witnesses and shall send duly signed summons to the Commissioner/Chandannagar Police Commissionerate who will serve the summons/witnesses warrants and submit the report in Court on the next date fixed recording the availability/non-availability of the witnesses. If after all due diligence the witnesses are not found to be examined, the learned trial Judge shall proceed examination of other remaining witnesses and conclude the trial positively within three months from the Puja vacation.

The parties are at liberty to obtain serve copy of this order and communicate the same to the learned trial Judge for information and strict compliance of this order.

The revisional application is thus, disposed of.

Urgent certified website copy of this order, if applied for, be furnished to the parties upon compliance of necessary formalities.

(Bibek Chaudhuri, J.)