

06.01.2022

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C.R.R. No. 2467 of 2021

In re : Kader Khan.

..Petitioner.

Re: Application under Section 482 read with Section 401 of the
Code of Criminal Procedure filed on 07.12.2021

Mr. Rajdeep Majumder,
Mr. Moyukh Mukherjee.

...for the petitioner.

Mr. Saswata Gopal Mukherji, Id. P.P.
Mr. Rudradipta Nandy,
Mr. S. Ahmed.

...for the State.

This revisional application has been filed challenging the order dated 2nd December, 2021 passed by the learned Additional District & Sessions Judge, Fast Track, 2nd Court, City Sessions Court, Calcutta in Sessions Case No. 47 of 2012.

By the impugned order, a request for recall of the Investigating Officer of the case being PW-47 has been turned down. The petitioner's application under Section 311 of the Code of Criminal Procedure has therefore been rejected.

The order is challenged principally on the ground that the learned Sessions Judge did not apply his mind to the provisions of Section 311 of the Code of Criminal Procedure and the facts of the case in rejecting the prayer of the petitioner.

In terms of the order of this Court dated 2nd February, 2021 passed in C.R.M. No. 9605 of 2020 the Court below was to complete the Trial within six months. The main trial has already ended in the conviction of some of the chargesheeted accused. The revisionist was absconding and was apprehended in the year

2016 in Uttar Pradesh, and brought to trial. About 47 witnesses have been examined and cross-examined.

The ground urged for recall of PW 47 is that the earlier Advocate of the petitioner, one Mr. Ashok Bakshi, who had completed the cross-examination of PW-47 has passed away. The newly appointed Advocate, one Mr. S. K. Basu, found certain gaps in the cross-examination of four witnesses.

It further appears that the examination under Section 313 of the Code of Criminal Procedure of the accused has already been completed. Final arguments on behalf of the prosecution are continuing for seven days and is on the verge of completion.

The records indicate that PW 47 was recalled once earlier and was further cross-examined. A Second recall is being sought by a newly appointed Advocate. The learned Court below has considered all the relevant facts and case law cited by the parties and has passed a reasoned order.

It is indeed true that an accused in a criminal trial is required to be given the widest of opportunity to defend himself. However, in the facts of the instant case it is seen that the conclusion arrived at by the Court below, cannot be faulted. This Court also unable to accept the bona fides of recall of PW-47 for the second time.

The Court below has given sufficient and substantial opportunity and leverage to the petitioner to raise his defence and cross-examine all the witnesses. Some witnesses have already been recalled once.

The second prayer now made for recall of four witnesses and a concession made before this Court that the only two

witnesses are sought to be recalled and examination would be completed in a single day, does not inspire any confidence before this Court. The conclusion of the Court below that the application has been filed to drag the proceedings and prolong the trial cannot be brushed aside.

It is now well-settled that an assessment of the conduct of the parties, by a Trial Judge, is generally not interfered with by a Higher Court particularly on matters relating to procedure. This Court even otherwise does not see any breach of any procedure or deprivation of the right to fair defence in the facts of the case.

For the reasons stated hereinabove, the revisional application must fail and is hereby dismissed.

The trial shall be concluded as expeditiously as possible.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties as early as possible.

(Rajasekhar Mantha, J.)