

**Form No. J (1)**

**IN THE HIGH COURT AT CALCUTTA  
CRIMINAL APPELLATE JURISDICTION  
APPELLATE SIDE**

Present:

**The Hon'ble Justice Debangsu Basak  
And  
The Hon'ble Justice Bibhas Ranjan De**

**C.R.A. 222 of 2020  
Aisha Shaikh  
versus  
The State of West Bengal & Anr.**

For the Appellant : Mr. Tarique Quasimuddin  
Mr. Zainab Tahur  
Md. Irshad Yaqub

For the Respondent : Mr. Debashish Roy  
No. 2 Mr. Avik Ghatak  
Mr. Aniruddha Bhattacharya  
Ms. Afreen Begum

Heard on : 11.08.2022

Judgment on : August 11, 2022.

**DEBANGSU BASAK, J.:**

1. The appeal is against the Order No. 18 dated September 21, 2020 passed by the learned Additional District and Sessions Judge, Fast Track Court, Sealdah, South 24-Parganas in Sessions Trial No. 03(02) of 2020.
2. By the impugned order, the learned Trial Judge was pleased to hold that since the evidence of the prosecution remained inadmissible in view of the prosecution witnesses not being made available for cross-examination, the case was of no evidence and therefore acquitted the accused under Section 232 of the Code of Criminal Procedure.
3. The Sessions trial emanated from the first information report dated October 11, 2017 under Sections 366/323/506 of the Indian Penal Code, 1860 and Section 25(1B)(a) of the Arms Act, 1959.
4. The de facto complainant lodged the police complaint claiming that she was in a relationship with one Asim Akhtar. She narrated how she was allegedly kidnapped by Asim Akhtar at gun point and the attempt made by Asim Akhtar in ravishing her, in the police complaint.
5. The police investigated such complaint and submitted a charge-sheet. The learned Court framed charges under Sections 366/323/506 (Part II) of the Indian Penal Code, 1860 and Section 25(1)(B)(a) of the Arms Act, 1959 against the accused.
6. At the trial, after the examination in chief of the first prosecution witness the accused claimed deferment of the cross-examination of such witness which was granted.

7. The prosecution examined three witnesses. Cross examination of all three prosecution witnesses were deferred on the prayer of the accused. Thereafter, the de facto complainant applied under Section 319 of the Code of Criminal Procedure for adding parties to the trial. Such application was considered by the learned Judge from time to time.

8. By an order dated September 14, 2020, the learned Judge observed that the order on the application under Section 319 of the Code of Criminal Procedure will be passed after the examination of all the witnesses are over. By the impugned order bearing No. 18 dated September 21, 2020, the learned Judge acquitted the accused under Section 232 of the Code of Criminal Procedure on the ground that the evidence of the prosecution remained inadmissible in nature. The learned Judge did not pass any order on the application under Section 319 of the Code of Criminal Procedure till the impugned order.

9. The Court is informed that the de facto complainant preferred a revisional application directed against the order dated September 14, 2020 where the learned Judge observed that the order on the application under Section 319 of the Code of Criminal Procedure will be passed after examining of all the witnesses were over. The Court is also informed that the revisional application was subsequently rendered infructuous in view of the disposal of the Sessions Trial case by the impugned order dated September 21, 2020.

10. Learned Advocate appearing for the appellant, relies upon **(2014) 2 SCC 92 (Hardeep Singh vs. State of Punjab & Ors.)** and submits, an application under Section 319 of the Code of Criminal Procedure can be decided even after conclusion of the examination in chief and that the Court need not wait for the cross-examination to be concluded.

11. Referring to the facts of the present case, he submits that, during the examination in chief of the prosecution witnesses names of other accused needed to be tried in the same criminal case transpired. Consequently, the de facto complainant applied under Section 319 of the Code of Criminal Procedure for adding them as accused in the trial. The learned Judge ought to have decided the application under Section 319 and erred in not doing so.

12. Learned Advocate appearing for the private respondent submits that the prosecution was lax in proceeding with the trial. The prosecution witnesses were not being made available for the purpose of cross-examination. He refers to various orders passed by the learned Court from time to time in this regard.

13. In the facts of the present case, three prosecution witnesses were examined in chief. Apparently, there were some laxity on the part of the prosecution in producing such witnesses for cross-examination. At the same time, the cross-examination of the prosecution witnesses were deferred on the prayer made on behalf of the accused.

14. The fact remains that the de facto complainant applied under Section 319 of the Code of Criminal Procedure for adding persons as accused at the trial in view of the evidence led so far. Such application was considered from time to time by the learned trial Judge. The learned trial Judge by an order dated September 14, 2020 observed that, order of such application will be passed after examination of all the witnesses were over. A revisional application was carried against such order. However, the revisional application was rendered infructuous in view of the subsequent disposal of the sessions case.

15. **Hardeep Singh (supra)** is of the following view :

*“Thus, in view of the above, we hold that power under Section 319 CrpPC can be exercised at the stage of completion of examination-in-chief and the court does not need to wait till the said evidence is tested on cross-examination for it is the satisfaction of the court which can be gathered from the reasons recorded by the court, in respect of complicity of some other person(s), not facing the trial in the offence.”*

16. Therefore, on the strength of **Hardeep Singh (supra)** an application under Section 319 of the Code of Criminal Procedure was required to be decided by the learned Judge without waiting for the cross-examination to be over.

17. The application under Section 319 of the Code of Criminal Procedure was kept pending by the learned Judge till the final order. It is

significant to note the contents of the order dated September 14, 2020 of the learned Judge where, the learned Judge observed that the order will be passed after examination of all the witnesses were over.

18. With the deepest of respect, such observations of the learned Judge as recorded in the order dated September 14, 2020 is contrary to the law laid down in **Hardeep Singh (supra)**.

19. The learned Judge erred in not disposing the application under Section 319 of the Code of Criminal Procedure filed on behalf of the de facto complainant. In such circumstances, it would be appropriate to set aside the impugned order dated September 20, 2020 passed by the learned trial Judge. It would be appropriate to remand sessions trial being ST No. 03(02) of 2020 to the appropriate Court for trial from the stage it attained till the order dated September 21, 2020.

20. The trial Court is requested to dispose of the application under Section 319 of the Code of Criminal Procedure filed on behalf of the de facto complainant without being prejudiced by any of the observations made in this judgment and order. No doubt, the learned trial Court will dispose of the sessions trial expeditiously after disposal of the application under Section 319 of the Code of Criminal Procedure. The learned trial Judge is requested not to grant any unnecessary adjournment to any of the parties. The learned trial Judge is also requested to invoke the provisions of Section 309 of the Code of Criminal Procedure for disposal of the trial expeditiously.

21. CRA 222 of 2020 is disposed of accordingly.
22. Urgent photostat certified copy of this judgment be given to the parties, if applied for, on usual undertakings.

23. I agree

**(Debangsu Basak, J.)**

**(Bibhas Ranjan De, J.)**