

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 205 of 2020

Ajid Sk. & Ors.

Vs

State of West Bengal & Anr.

For the Petitioners

: Ms. Shabana Hasin,
Mr. Mobaidur Hossain.

For the State

: Mr. Madhusudan Sur,
Mr. Manoranjan Mahato.

Heard on

: 27.02.2023

Judgment on

: 27.03.2023

Shampa Dutt (Paul), J.:

1. The present revision has been preferred against an order dated 01.11.2019 and 14.11.2019 passed by the Learned Additional Session Judge Jangipur, Murshidabad, in Sessions Case No. 468/13 (C.I.S. No. 1525/14) wherein the Learned Judge was pleased to close the evidence of the accused.
2. The petitioner's case is that the Opposite Party No.1 being the defacto complainant filed a complaint before the Officer-in-Charge Sagardighi Police Station against the petitioner. The gist of the complaint is that the daughter of the complainant Hena Bibi was given in marriage with the petitioner No. 1. After the marriage, petitioners inflicted physical and mental torture demanding more dowry. The defacto complainant consoled her with the assurance that he will satisfy their demand on 08.07.2010. The petitioner No. 1 phoned the defacto complainant and asked him to come to their house if he wants to see his daughter alive. The defacto complainant rushed to their house and found his daughter lying dead. And there was no other family members present.
3. Sagardighi Police Station Case No. 266/2010 dated 09.07.2010 under Section 498A/304B/34 of the Indian Penal Code was started and after investigation charge sheet was submitted.

4. The case was committed for Trial. The trial started before the Additional Session Judge, Jangipur, Murshidabad. 13th (thirteen) witnesses have been examined. The prosecution filed a petition praying for leave of the court to submit the F.S.L. Report. The petition came up for hearing on 29.11.2018. The F.S.L. report was received from Sagardighi Police Station but the prosecution submitted that they are not inclined to rely upon the F.S.L. report. The Advocate appearing on behalf of the petitioner prayed before the court to rely upon the F.S.L. report but the court did not pay any heed in this regard and **closed the evidence of the prosecution and fixed 13.12.2018 for examination of the accused.** The petitioner came to learn that the F.S.L. report disclosed something which is in favour of the petitioner.
5. On 01.11.2019, the Advocate appearing on behalf of the petitioner filed an adjournment petition. But due to some unavoidable circumstances could not appear before the court when the matter was called on. The Learned Judge was pleased to reject the adjournment petition and also pleased **to close the evidence of the accused/petitioner. The Learned Judge while considering the adjournment petition held that as many as five dates were wasted due to the strike by the Local Bar Association, as such the petitioner is not entitled to get any adjournment.** The Ld.

Judge also closed the evidence on behalf of the defence and fixed 14.11.2019 for arguments.

6. On 14.11.2019 the Ld. Advocate for the prosecution prayed for time and filed an adjournment petition. An application was filed by the petitioners Advocate with a prayer that as the F.S.L. Report is an important piece of evidence in this case therefore the court should take the F.S.L. Report in its judicial notice. The Ld. Judge considered the prayer of the Accused and was pleased to keep the application pending and **decided that this application will be disposed of at the time of delivery of judgment.**
7. **Ms. Shabana Hasin, learned counsel for the petitioner** has submitted that the Learned Trial Judge by his two impugned orders has denied fair trial to this accused/petitioner.
8. It is also submitted that the Ld. Trial Judge ought to have considered that 'Fair Trial' includes fair and proper opportunities allowed by law to prove the innocence of the accused. Adducing evidence in support of the defence is a valuable right. Denial of that right means denial of Fair Trial, and thus justice.
9. It is submitted that as the Ld. Trial Judge by his impugned order dated 01.11.2019 closed the evidence of the accused/petitioners, they lost their right to file an application under Section 233 Cr.P.C. before the Court to issue any process for compelling the attendance of any witness for the purpose of

examination, cross-examination or seeking production of any document or other things to disprove the case of the prosecution.

10. The petitioner by a petition dated 14.11.2019 prayed before the Trial Judge to take judicial notice of the F.S.L. Report so that the result of F.S.L. Report can be considered at the time of argument but the Ld. Judge kept the petition pending and directed that this petition will be considered at the time of delivery of Judgment. By this order Ld. Trial Judge made the petitioner's application infructuous. As to disprove the prosecution case, the opinion of the expert relating to the F.S.L. Report is a piece of vital evidence and until and unless the expert is called as a witness before the court or the court takes judicial notice of the F.S.L. Report, the petitioner will be unable to prove his case and will thus suffer miscarriage of justice.

11. The petitioner submits that the orders impugned are illegal and required to be set aside to prevent the abuse of the process of the court and for the ends of justice.

12. **Section 233 of the Code of Criminal Procedure, lays down:-**

"233. Entering upon defence.-

(1) Where the accused is not acquitted under section 232, he shall be called upon to enter on his defence and adduce any evidence he may have in support thereof.

(2) If the accused puts in any written statement, the Judge shall file it with the record.

(3) If the accused applies for the issue of any process for compelling the attendance of any witness or the production of any document or thing, the Judge shall issue such process unless he considers, for reasons to be recorded, that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice."

13. The Supreme Court in **Dr. Rajesh Talwar and Anr. vs C.B.I. & Anr., SLP (Crl.) No. 7966 of 2013, on 08.10.2013**, laid down the circumstances under which such prayers under Section 233 Cr.P.C. is to be considered.

14. **The order dated 01.11.2019, lays down:-**

Sessions-468/13 (C.I.S. No.1525/14)

Order No. 53 dated 01.11.2019

Hazira is filed on behalf of all the four accused persons. A fresh vokalatnama has been filed on behalf of the accused persons along with the adjournment petition. But the said petition was not moved before this Court. None of the accused persons was found present when the case was called for hearing. Today was fixed for D.W i/d argument.

*I find that this case has remained at this stage of D.W since 06.02.19. **As many as five dates have been wasted due to strike by the local Bar Association.** On 06.09.19 a fresh vokalatnama has been filed on behalf of the accused persons and accordingly the case was fixed today for D.W i/d argument as last chance. Hence the adjournment petition is rejected and the evidence on behalf of the accused is closed.*

Fix 14.11.19 for argument. Accused as before.

Dictated & corrected by me

**Sd/-
Additional Sessions Judge,
Jangipur, Murshidabad.**

15. **The order dated 14.11.2019, lays down:-**

Sessions- 468/13

Order No. 54 dated 14.11.2019.

All four accused persons on c/b are present by filing hazira. Today is fixed for argument as last chance. Adjournment petition is filed on behalf of the prosecution on the ground that the prosecution is unable to collect the necessary papers for argument. This is a case of 2013. The evidence commenced on 19.08.14 and as many as 13 witnesses have been examined. Therefore it is difficult to believe that prosecution without having necessary papers have conducted the trial (deposition of witnesses). Hence the adjournment petition is rejected.

Another petition has been filed on behalf of the accused persons stating that the FSL report is an important piece of evidence in this case and it is a public document and therefore the court should take the FSL report in its judicial notice. **Considering the prayer made by the defence side, the said petition will be disposed at the time of delivery of judgment.**

However since the P.P in charge is absent today and his substitute does not have any knowledge about this case, the argument is adjourned today for the ends of justice.

Fix 19.11.19 for argument. No further date will be allowed.

Accused as before.

Dictated & corrected by me,

Sd/-

**Additional Sessions Judge, 1st Court,
Jangipur, Murshidabad.**

16. In the present case it is the prosecution who called for the FSL and did not rely upon it. The order of the trial court is clear that the delay was due to the cease work by local/Bar Association. One day accommodation was sought for by the petitioner/accused. Vide the order dated 14.11.2019, the learned Trial Judge passed an order that **the said application shall be considered at the time of**

judgment. The said order is not in accordance with law and against the principle of natural justice as considering an application under Section 233 Cr.P.C. at the time of judgment makes the application infructuous considering its nature. The said order being against the principle of natural justice is thus liable to be set aside.

17. Thus considering the said position of law and the view of the Supreme Court in **Dr. Rajesh Talwar and Anr. Vs C.B.I. and Anr. (Supra)** the orders dated 01.11.2019 and 14.11.2019 are liable to be set aside, being not in accordance with law and against the principles of natural justice.

18. **CRR 205 of 2020 is allowed.**

19. The orders dated 01.11.2019 and 14.11.2019 in Sessions Case No. 468/13 (C.I.S. No. 1525/14) passed by the learned Additional Session Judge, Jangipur, Murshidabad, are set aside. The Learned Trial Judge will proceed with the trial by giving the accused/petitioner an opportunity as per Section 233 Cr.P.C. to produce/call for witnesses/documents and permit the same to be proved in accordance with law. The petitioner/accused is directed to be diligent and to not cause any intentional delay in the trial.

20. There will be no order as to costs.

21. All connected Application stand disposed of.

22. Interim order if any stands vacated.

23. Copy of this judgment be sent to the learned Trial Court forthwith for necessary compliance.
24. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)