

**HIGH COURT AT CALCUTTA  
IN THE CIRCUIT BENCH AT JALPAIGURI  
CRIMINAL REVISIONAL JURISDICTION  
APPELLATE SIDE**

**PRESENT:  
THE HON'BLE JUSTICE BIVAS PATTANAYAK**

**CRR 39 of 2023  
CRAN 1 of 2023  
Kalipada Sarkar @ Kali Pada Sarkar  
versus  
Central Bureau of Investigation**

|                    |   |                                                                                                                                         |
|--------------------|---|-----------------------------------------------------------------------------------------------------------------------------------------|
| For the Petitioner | : | Mr. Ayan Bhattacharyya, Advocate<br>Mr. Apalak Basu, Advocate<br>Mr. Arijit Ghosh, Advocate                                             |
| For the CBI        | : | Mr. Sudipto Kumar Mazumdar, Ld. DSGI<br>Mr. Ajoy Kr. Singhanian, Advocate<br>Mr. Sourab Kar, Advocate<br>Mr. Sudip Kumar Paul, Advocate |
| Heard on           | : | 04.08.2023                                                                                                                              |
| Judgment on        | : | 10.10.2023                                                                                                                              |

**Bivas Pattanayak, J. :-**

1. This revisional application has been filed by the petitioner under Section 397/401 read with Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code') challenging order dated 18<sup>th</sup> January, 2023 passed by learned Special Judge, (CBI) Court at Siliguri in connection with Special (CBI) Case No. 6 of 2012 (earlier registered as Special Case No. 1 of 2003) arising out of CBI/ACB/Kolkata Police Station RC Case No. 39 of 2000 dated 1<sup>st</sup> December, 2000 initiated under Section 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act, 1988 rejecting the application of the petitioner under Section 311 of the Code

read with Section 165 of the Indian Evidence Act for production of documents and recall of witnesses.

**2.** Brief fact of the case is that the Central Bureau of Investigation (in short, 'CBI'), Anti-Corruption Branch, Kolkata registered a case being no. RC 39 of 2000 dated 1<sup>st</sup> December, 2000 under Section 13(1)(e) read with Section 13(2) of Prevention of Corruption Act, 1988 on the basis of reliable source information to the effect that the petitioner namely Kalipada Sarkar, Superintendent (Technical), Central Excise, Jalpaiguri, has acquired huge movable and immovable assets either in his name or in the name of his family member which are grossly disproportionate to his known sources of income, which is reasonably believed that the petitioner (accused person) being a public servant will not be able to satisfactorily account for. It is alleged that the petitioner (accused person) acquired disproportionate assets of Rs. 14,78,211/- (approx) by adopting dubious means. Upon investigation, the CBI finding *prima facie* materials of disproportionate assets of Rs. 22,89,235.60/- submitted charge sheet against the petitioner (accused person) Kalipada Sarkar under Section 13(1)(e) read with Section 13(2) of Prevention of Corruption Act, 1988. The learned Special Judge took cognizance of the offence and charges were framed against the petitioner (accused person) under Section 13(1)(e) read with Section 13(2) of Prevention of Corruption Act, 1988. In the trial, 73 witnesses were examined along with documents. At the stage of hearing arguments, the petitioner filed application under Section 311 of the Code read with Section 165 of Indian Evidence Act for production of documents and recall of witness no. PW71 and PW73. By the impugned order, the

prayer of the petitioner under the aforesaid provisions of law for production of documents and recall of witnesses was rejected by the learned Trial Court.

**3.** Being aggrieved by and dissatisfied with the impugned order of the learned Trial Court, the petitioner has filed the present revisional application.

**4.** Mr. Apalak Basu, learned advocate for the petitioner, submitted that, at the time of initiation of the case, the petitioner was holding the post of Superintendent (Technical), Central Excise, Jalpaiguri. The disproportionate assets projected in the charge sheet are completely different from what existed in the reality. As a government servant, he has received money on various occasions due to increase in salary/allowances on promotion to higher post and during the check period (1975 to 2000), there have been three Pay Commissions which had led to revision of pay and allowances of the petitioner and he received a lump sum of arrears on such pay revision, however, the service book, personal files or pay bills/register were not produced by the prosecuting agency and it was deliberately withheld. Due to such reason, the petitioner was constrained to file an application Section 311 of the Code read with Section 165 of the Indian Evidence Act praying for a direction upon the Assistant Commissioner, Central Excise and GST, Siliguri for causing production of documents, more particularly the personal file, documents showing rewards earned, arrears of pay, pay bills/register etc. before the learned Trial Judge either by appearing himself or through any competent official and recall of prosecution witnesses namely PW71 Chandar Bhan and

PW73 Siddhartha Chakraborty for further cross-examination. He further submitted that the power under Section 311 of the Code is the widest discretionary power given to the Courts to ensure that the judgment should not be rendered on inchoate, inconclusive and speculative presentation of facts as thereby the ends of justice would be defeated and it is the obligation of the Court to examine or recall or re-examine any such witness which appears to the Court to be essential for just decision of the case. The whole and sole object behind such discretionary power is to enable the Court in finding out the truth or obtaining proper proof for such facts which will lead to a just and correct decision of the case. The prayer of the petitioner is to unearth and present before the Court the actual facts and not to fill up any lacuna and thus, such innocuous prayer of the petitioner for production of documents and recall of witnesses needs to be allowed which will lead to just and correct decision of the case. To buttress his contentions, he relied on the following decisions:

- i. ***Rajaram Prasad Yadav versus State of Bihar and Another*<sup>1</sup>**
- ii. ***Manju Devi versus State of Rajasthan and Another*<sup>2</sup>**
- iii. ***In re: Lakshmi Malik*<sup>3</sup>**

Moreover, he submitted that the ultimate objective of trial is to find out the truth and not to debar a party from giving evidence on the point of hyper-technicalities. The constitutional tradition imbibes both substantive fairness and procedural fairness in criminal justice system. On behalf of his client, Mr. Basu, learned advocate undertakes that in the event the

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<sup>1</sup> (2013) 14 SCC 461

<sup>2</sup> (2019) 6 SCC 203

<sup>3</sup> C.R.R. No. 2600 of 2019

prayer of the petitioner is allowed, the cross-examination of the witnesses will be concluded within three months from the date of passing of the order. In the light of his aforesaid submissions, he prayed for setting aside the impugned order of the learned Trial Court by allowing the prayer of the petitioner for recall of witnesses and production of documents.

**5.** In reply to the contentions raised on behalf of the petitioner, Mr. Sudipto Kumar Mazumdar, learned DSGI appearing on behalf of opposite party-CBI, at the outset, raising objection to the maintainability of the present revisional application submitted that as per the provisions of Section 397 (2) of the Code, the power of revision conferred by Sub-Section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceedings. In the present case, the impugned order rejecting the application under Section 311 of the Code is purely an interlocutory order and thus revision is clearly barred under Section 397(2) of the Code. In support of his contentions, he relied upon the decision of the Hon'ble Supreme Court passed in ***Sethuraman versus Rajamanickam***<sup>4</sup>. On the merits of the application, he submitted that the service book has been exhibited on behalf of the prosecution without objection. Thus, the contention that the service book of the petitioner was not produced is a conjecture. Moreover, while dealing with the application for production of the documents and recall of witnesses, the learned Trial Judge has meticulously gone through the service book of the petitioner **(Exhibit 151)** and has found that all orders upto 17<sup>th</sup> May, 2001 in respect of the petitioner relating to his service including the matter of his

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<sup>4</sup> **2009 (5) SCC 153**

promotion, increment, pay fixations after Pay Commission are available and there is no reflection of any reward being given to the petitioner. The arrears of pay of the petitioner have also been noted in the service book. During his examination as DW1 and on re-examination on recall, the petitioner did not state that he received reward from the department or any other authority during his service period. All the pay bills and salary statements of the petitioner are also produced before the Court. The learned Trial Judge noted the aforesaid aspects and has opined that since the service book of the accused petitioner has been produced and exhibited, the question of calling for of service book of the petitioner and the pay bills are not required. He further submitted that so far as the recalling of the witnesses namely PW71 (authority sanctioning prosecution) and PW73 (investigating officer) are concerned, he indicated that the investigating officer of this case has been cross-examined for 11 days. The application for recall of the witnesses does not specify the reasons whatsoever for recalling of the witnesses for further cross-examination. Precisely, the application has been filed to delay the disposal of the case and as an abuse of the process of law. Although the power conferred under Section 311 of the Code should be invoked by the Court only to meet the ends of justice but such power shall not be exercised if the Court is of the view that the application has been filed as an abuse of the process of law and if the Court finds that the reason for non-examination of the witnesses earlier is not satisfactory and that too at a belated stage of proceedings when the matter is scheduled for hearing argument, such application for production of documents and recall of witnesses should ordinarily be

dismissed. To buttress his contentions, he relied on the decision of Hon'ble Supreme Court passed in ***Swapan Kumar Chatterjee versus Central Bureau of Investigation***<sup>5</sup>. In light of his aforesaid submissions, he prayed that the revisional application should be dismissed in *limini*.

6. Mr. Basu, learned advocate for the petitioner, in reply to the point of maintainability of the present revisional application, submitted that the present application is very much maintainable inasmuch as by invocation of the inherent powers of the High Court under Section 482 of the Code this Court can entertain the revisional application against an order rejecting prayer under Section 311 of the Code, since no alternative remedy is available in the Code for redressal of such grievance. Therefore, the argument advanced on behalf of opposite party-CBI is meritless and is not sustainable.

7. Upon hearing the learned advocates for the respective parties, it is found that the present revisional application hinges on two issues.

*Firstly*, whether the present revisional application is maintainable before this Court; and

*Secondly*, whether the learned Trial Court was justified in rejecting the application of the petitioner under Section 311 of the Code read with Section 165 of the Indian Evidence Act for production of documents and recall of witnesses.

8. Before delving into the merit of the application, it would be apposite to deal with the first issue pertaining to the point of maintainability of the present revisional application raised by the opposite party-CBI. The

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<sup>5</sup> (2019) 14 SCC 328

Hon'ble Supreme Court in ***Girish Kumar Suneja versus C.B.I.***<sup>6</sup> has observed that there are three categories of orders that a Court can pass – final, intermediate and interlocutory. There is no doubt that in respect of a final order, a Court can exercise its revisional jurisdiction that is in respect of final order of acquittal or conviction. There is equally no doubt that in respect of an interlocutory order, the Court cannot exercise its revision jurisdiction. As far as an intermediate order is concerned, the Court can exercise its revisional jurisdiction since it is not an interlocutory order. According to Section 397(2) of the Code, revision against an interlocutory order is not maintainable. It is well settled that in deciding whether an order challenged is interlocutory or not as far as Section 397(2) is concerned, the sole test is not whether such order is passed in the interim stage. If the order under challenge culminates the criminal proceedings as a whole or finally decides the right and liabilities of the parties, then the order passed is not interlocutory in spite of the fact that it was passed during any interlocutory stage. The feasible test is whether by upholding the objections raised by a party it would result in culminating the proceedings, if so, any order passed on such objections would not be merely interlocutory in nature as envisaged in Section 397(2) of the Code [See ***Bhaskar Industries Ltd. versus Bhiwani Denim & Apparels Ltd. & Another***<sup>7</sup>]. The law is well settled by the Hon'ble Supreme Court in a judgment rendered in *Sethuraman (supra)* wherein it has held that the orders passed by the Trial Court refusing to call the documents and for

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<sup>6</sup> **AIR 2017 SC 3620**

<sup>7</sup> **(2001) 7 SCC 401**

recalling of witness and thereby rejecting an application under Section 311 of the Code were interlocutory orders and, as such, the revision against those orders were clearly barred under Section 397(2) of the Code. Be that as it may, challenge to the impugned order has also been made by the petitioner taking recourse to Section 482 of the Code. Now the pertinent question which requires consideration as to whether the challenge to the impugned order can be entertained by invoking inherent powers under Section 482 of the Code.

**8.1.** The Hon'ble Supreme Court in ***Madhu Limaye versus State of Maharashtra***<sup>8</sup> held that inherent powers under Section 482 of the Code enables the High Court to interfere in the matter to perform its duty towards ultimate requirement of serving the ends of justice. While overruling the judgment rendered in ***Amar Nath and Others versus State of Haryana and Another***<sup>9</sup>, the Hon'ble Supreme Court held as under:

*“10. As pointed out in Amar Nath’s case (supra) the purpose of putting a bar on the power of revision in relation to any interlocutory order passed in an appeal, inquiry, trial or other proceeding is, to bring about expeditious disposal of the cases finally. More often than not, the revisional power of the High Court was resorted to in relation to interlocutory orders delaying the final disposal of the proceedings. The Legislature in its wisdom decided to check this delay by introducing sub-section (2), in Section 397. On the one hand, a bar has been put in the way of the High Court (as also of the Sessions Judge) for exercise of the revisional power in*

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<sup>8</sup> **1977 (4) SCC 551**

<sup>9</sup> **(1977) 4 SCC 137**

relation to any interlocutory order, on the other, the power has been conferred in almost the same terms as it was in the 1898 Code. On a plain reading of Section 482, however, it would follow that nothing in the Code, which would include sub-section (2) of Section 397 also, "shall be deemed to limit or affect the inherent powers of the High Court". But, if we were to say that the said bar is not to operate in the exercise of the inherent power at all, it will be setting at naught one of the limitations imposed upon the exercise of the revisional powers. In such a situation, what is the harmonious way out? In our opinion, a happy solution of this problem would be to say that the bar provided in sub-section (2) of Section 397 operates only in exercise of the revisional power of the High Court, meaning thereby that the High Court will have no power of revision in relation to any interlocutory order. Then in accordance with one of the other principles enunciated above, the inherent power will come into play, there being no other provision in the Code for the redress of the grievance of the aggrieved party. But then, if the order assailed is purely of an interlocutory character which could be corrected in exercise of the revisional power of the High Court under the 1898 Code, the High Court will refuse to exercise its inherent power. But in case the impugned order clearly brings about a situation which is an abuse of the process of the Court or for the purpose of securing the ends of justice interference by the High Court is absolutely necessary, then nothing contained in Section 397 (2) can limit or affect the exercise of the inherent power by the High Court. But such cases would be few and far between. The High Court must exercise the inherent power very sparingly. One such case would be the desirability of the quashing of a criminal proceeding initiated illegally, vexatiously or as being without jurisdiction. Take for example a case where a

*prosecution is launched under the Prevention of Corruption Act without a sanction, then the trial of the accused will be without jurisdiction and even after his acquittal a second trial, after proper sanction will not be barred on the doctrine of autrefois acquit. Even assuming, although we shall presently show that it is not so, that in such a case an order of the Court taking cognizance or issuing processes is an interlocutory order, does it stand to reason to say that inherent power of the High Court cannot be exercised for stopping the criminal proceeding as early as possible, instead of harassing the accused upto the end? The answer is obvious that the bar will not operate to prevent the abuse of the process of the Court and/or to secure the ends of justice. The label of the petition filed by an aggrieved party is immaterial. The High Court can examine the matter in an appropriate case under its inherent powers. The present case undoubtedly falls for exercise of the power of the High Court in accordance with Section 482 of the 1973 Code, even assuming, although not accepting, that invoking the revisional power of the High Court is impermissible.”*

**8.2.** The Hon’ble Supreme Court in ***Mohit alias Sonu and Another versus State of U.P. and Another***<sup>10</sup> held when there is a specific remedy provided by way of appeal or revision, the inherent power under Section 482 of the Code cannot and should not be resorted to. While dealing with the issue, the Hon’ble Supreme Court observed as under:

*“28. So far as the inherent power of the High Court as contained in Section 482 of CrPC is concerned, the law in this regard is set at rest by this Court in a catena of decisions. However, we would like to reiterate that when*

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<sup>10</sup> (2013) 7 SCC 789

*an order, not interlocutory in nature, can be assailed in the High Court in revisional jurisdiction, then there should be a bar in invoking the inherent jurisdiction of the High Court. In other words, inherent power of the Court can be exercised when there is no remedy provided in the Code of Criminal Procedure for redressal of the grievance. It is well settled that inherent power of the Court can ordinarily be exercised when there is no express provision in the Code under which order impugned can be challenged.”*

**8.3.** In a subsequent decision passed in ***Prabhu Chawla versus State of Rajasthan and Another***<sup>11</sup>, the Hon’ble Supreme Court was seized of the matter where the High Court of Rajasthan had dismissed a petition preferred by the appellant Prabhu Chawla under Section 482 of the Code by holding it to be not maintainable as the appellant therein had remedy under Section 397 of the Code. The Hon’ble Supreme Court held as under:

*“6. In our considered view any attempt to explain the law further as regards the issue relating to inherent power of High Court under Section 482 CrPC is unwarranted. We would simply reiterate that Section 482 begins with a non obstante clause to state:*

***“482. Saving of inherent powers of High Court.***—*Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.”*

*A fortiori, there can be no total ban on the exercise of such wholesome jurisdiction where, in the words of Krishna Iyer, J.*

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<sup>11</sup> (2016) 16 SCC 30

*“abuse of the process of the court or other extraordinary situation excites the Court’s jurisdiction. The limitation is self-restraint, nothing more. (Raj Kapoor case, SCC p. 48, para 10)”*

*We venture to add a further reason in support. Since Section 397 CrPC is attracted against all orders other than interlocutory, a contrary view would limit the availability of inherent powers under Section 482 CrPC only to petty interlocutory orders! A situation wholly unwarranted and undesirable.*

**7.** *As a sequel, we are constrained to hold that the Division Bench, particularly in paragraph 28, in Mohit in respect of inherent power of the High Court in Section 482 CrPC does not state the law correctly. We record our respectful disagreement.*

**8.** *In our considered opinion the learned Single Judge of the High Court should have followed the law laid down by this Court in the case of Dhariwal Tobacco Products Ltd. and other earlier cases which were cited but wrongly ignored them in preference to a judgment of that Court in Sanjay Bhandari passed by another learned Single Judge on 5-2-2009 in SB Criminal Miscellaneous Petition No. 289 of 2006 which is impugned in the connected criminal appeal arising out of Special Leave Petition No. 4744 of 2009. As a result, both the appeals, one preferred by Prabhu Chawla and the other by Jagdish Upasane and other are allowed. The impugned common order dated 2-4-2009 passed by the High Court of Rajasthan is set aside and the matters are remitted back to the High Court for fresh hearing of the petitions under Section 482 CrPC in the light of law explained above and for disposal in accordance with law. Since the matters have remained pending for long, the High Court is requested to hear and decide the matters expeditiously, preferably within six months.”*

**8.4.** From the aforesaid observation of Hon'ble Supreme Court, it can be culled out that the High Court would have jurisdiction under its inherent power under Section 482 of the Code to decide the issue raised against the order declining an application of the petitioner under Section 311 of the Code read with Section 165 of the Indian Evidence Act for production of documents and recalling of witnesses. Accordingly, the objections raised by the opposite party-CBI regarding maintainability of the revisional application is hereby negated.

**9.** Reverting back to the merits of the case regarding the second issue as to whether the Trial Court had erred in dismissing the application of the petitioner under Section 311 of the Code read with Section 165 of the Indian Evidence Act for production of documents and recall of witnesses, it would be appropriate to reproduce Section 311 of the Code which provides for the power of the Court to summon material witness or examination of the person present which reads as follows:

***“311. Power to summon material witness, or examine person present.*—Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.”**

**9.1.** The first part of this Section, which is permissive, gives purely discretionary authority to the Criminal Court and enables it at any stage of

inquiry, trial or other proceedings under the Code to act in one of the three ways, namely, (i) to summon any person as a witness; or (ii) to examine any person in attendance, though not summoned as a witness; or (iii) to recall and re-examine any person already examined. The second party, which is mandatory, imposes an obligation on the Court (i) to summon and examine or (ii) to recall and re-examine any such person if his evidence appears to be essential to the just decision of the case.

**9.2.** The principle to be borne in mind while exercising power under Section 311 of the Code has been laid down in the judgment of the Hon'ble Supreme Court rendered in *Rajaram Prasad Yadav (supra)* which is reproduced as under:

***“17.2.** The exercise of the widest discretionary power under Section 311 CrPC should ensure that the judgment should not be rendered on inchoate, inconclusive and speculative presentation of facts, as thereby the ends of justice would be defeated.*

***17.3.** If evidence of any witness appears to the court to be essential to the just decision of the case, it is the power of the court to summon and examine or recall and re-examine any such person.*

***17.4.** The exercise of power under Section 311 CrPC should be resorted to only with the object of finding out the truth or obtaining proper proof for such facts, which will lead to a just and correct decision of the case.*

***17.5.** The exercise of the said power cannot be dubbed as filling in a lacuna in a prosecution case, unless the facts and circumstances of the case make it apparent that the exercise of power by the court would result in causing serious prejudice to the accused, resulting in miscarriage of justice.*

**17.6.** *The wide discretionary power should be exercised judiciously and not arbitrarily.*

**17.7.** *The court must satisfy itself that it was in every respect essential to examine such a witness or to recall him for further examination in order to arrive at a just decision of the case.*

**17.8.** *The object of Section 311 CrPC simultaneously imposes a duty on the court to determine the truth and to render a just decision.*

**17.9.** *The court arrives at the conclusion that additional evidence is necessary, not because it would be impossible to pronounce the judgment without it, but because there would be a failure of justice without such evidence being considered.*

**17.10.** *Exigency of the situation, fair play and good sense should be the safeguard, while exercising the discretion. The court should bear in mind that no party in a trial can be foreclosed from correcting errors and that if proper evidence was not adduced or a relevant material was not brought on record due to any inadvertence, the court should be magnanimous in permitting such mistakes to be rectified.*

**17.11.** *The court should be conscious of the position that after all the trial is basically for the prisoners and the court should afford an opportunity to them in the fairest manner possible. In that parity of reasoning, it would be safe to err in favour of the accused getting an opportunity rather than protecting the prosecution against possible prejudice at the cost of the accused. The court should bear in mind that improper or capricious exercise of such a discretionary power, may lead to undesirable results.*

**17.12.** *The additional evidence must not be received as a disguise or to change the nature of the case against any of the party.*

**17.13.** *The power must be exercised keeping in mind that the evidence that is likely to be tendered, would be germane to the issue involved and also ensure that an opportunity of rebuttal is given to the other party.*

**17.14.** *The power under Section 311 CrPC must therefore, be invoked by the court only in order to meet the ends of justice for strong and valid reasons and the same must be exercised with care, caution and circumspection. The court should bear in mind that fair trial entails the interest of the accused, the victim and the society and, therefore, the grant of fair and proper opportunities to the persons concerned, must be ensured being a constitutional goal, as well as a human right."*

**9.3.** In *Swapan Kumar Chatterjee (supra)*, the Hon'ble Supreme Court observed as follows:

**"11.** *It is well settled that the power conferred under Section 311 should be invoked by the court only to meet the ends of justice. The power is to be exercised only for strong and valid reasons and it should be exercised with great caution and circumspection. The court has wide power under this section to even recall witnesses for re-examination or further examination, necessary in the interest of justice, but the same has to be exercised after taking into consideration the facts and circumstances of each case. The power under this provision shall not be exercised if the court is of the view that the application has been filed as an abuse of the process of law."*

**9.4.** Bearing in mind the aforesaid principles laid down by the Hon'ble Supreme Court, let me examine as to whether the Court was justified that the new evidence to be brought is not required and whether the evidence sought to be led under Section 311 of the Code is required for just decision of a case. It is not in dispute that the charges were framed against the

petitioner under Section 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act on 28<sup>th</sup> June, 2017. The prosecution has examined 73 witnesses to bring home the charges framed against the petitioner (accused person). After completion of the evidence at the stage of hearing argument, the petitioner filed application under Section 311 of the Code read with Section 165 of the Indian Evidence Act with a prayer for production of documents and recalling of witnesses. In his application for such production of documents and recall of witnesses, the petitioner has precisely prayed for production of documents namely service book, personal file and documents showing rewards earned/arrears of pay/pay bills/registers and also for further cross-examination of witnesses namely Chandar Bhan (sanctioning authority for prosecution-PW71) and Siddhartha Chakraborty (investigating officer-PW73). Upon perusal of the impugned order under challenge, it is found that the service book of the petitioner has been produced before the Court which has been marked as **Exhibit 151 (collectively)**. Therefore, the contention of the petitioner that the said document should be called for does not stand to reason. The petitioner further has prayed for documents showing rewards earned. It is pertinent to note that the petitioner in his application has not disclosed any specific dates in which the rewards were given. It is apparent from the impugned order that the learned Trial Judge has noted that the service book did not reflect of any reward to have been given to the petitioner by the department. The learned Trial Judge in this regard has also noted that the petitioner Kalipada Sarkar (DW1) in his deposition or during his re-examination on recall did not state of receiving any reward from the

department. The impugned order further reveals that the service book **(Exhibit 151-collectively)** contains all the orders upto 17<sup>th</sup> May, 2001 relating to the service of the petitioner including his promotion, increment, pay fixation after Pay Commission. The service book also shows that arrears of pay were paid to the petitioner-accused person on several occasions. The learned Trial Judge has also noted that salary statements of the accused **(Exhibit 126, 76)**, pay and allowance of the petitioner-accused person **(Exhibits 45, 46,133)** have been produced and it is noted that on perusal of those exhibits, the Basic Pay, D.A., respective I.R., Pay Advance, Festival Advance, Arrear D.A., Adhoc Bonus, Uniform Allowance, Arrear Pay and Installment of Arrear paid on Pay Commission etc. is noted in the service book. Neither learned advocate for the petitioner at the time of hearing could indicate the period of rewards, arrears, allowances received which has not been brought on record by the prosecution nor such has been detailed in the application for production of documents and recall of witnesses. It is also found from the impugned order that PW71 has accorded sanction for prosecution and PW73 is the investigating officer. Needless to mention that PW73 has been cross-examined by the petitioner for 11 days. Thus, the petitioner got ample opportunity to extensively cross-examine PW73 thoroughly on all points of defence. The learned Trial Judge on such ground has dismissed the application of the petitioner for recall of witnesses and production of documents. The power conferred under Section 311 of the Code though has wide discretion to be invoked by the Court to meet the ends of justice only, but such power shall not be exercised if it is found that the application filed as an abuse of

process of law. This Court having examined the impugned order dated 18<sup>th</sup> January, 2023 finds that the reasons for refusing the prayer of the petitioner for production of documents and recall of witnesses have been duly recorded and does not call for interference.

**9.5.** In *Manju Devi (supra)*, the case related to an offence under Section 302, 304B and 498A of the Indian Penal Code. The investigating agency did not cite the doctor who conducted first postmortem in Nigeria as a witness and the Hon'ble Supreme Court in the given set of facts and circumstances observed that it is evident that the testimony of the said doctor who conducted first postmortem in Nigeria is germane to the questions involved in this matter and for a just decision of the case with adequate opportunity to both the parties to put forward their case, it held that the application under 311 of the Code ought to have been allowed. The facts of the cited decision are distinguishable from the case at hand.

**10.** In *Lakshmi Malik (supra)*, the offences related to Section 302 of the Indian Penal Code. Further in the facts and circumstances of the said case, the Court found the recall of witness was imperative and upheld the order of the Trial Court of allowing the application for recall. Therefore, the facts are distinguishable.

**11.** In light of the above discussion, the revisional application being no. **CRR 39 of 2023** stands dismissed. The impugned order dated 18<sup>th</sup> January, 2023 passed by Special Judge (CBI) Court at Siliguri in connection with Special (CBI) Case No. 6 of 2012 is hereby affirmed.

**12.** All connected applications, if any, stand disposed of.

**13.** Interim order, if any, stands vacated.

**14.** Let a copy of this order be forwarded to the learned Trial Court for information.

**15.** Urgent photostat certified copy of this judgment, if applied for, be given to the parties upon compliance of necessary legal formalities.

**(Bivas Pattanayak, J.)**