

Form No. J(2)

Circuit Bench of Calcutta High Court
at Jalpaiguri
Criminal Revisional Jurisdiction
Appellate Side

Present:
The Hon'ble Justice Siddhartha Roy Chowdhury

CRR 181 of 2022

Swajal Sarkar @ Sajal Sarkar & Anr.
Vs.
The State of West Bengal & Anr.

For the Petitioners : Mr. Sudhindra Das
For the State : Mr. Aditi Shankar Chakraborty, Ld. A.P.P.
Mr. Aniruddha Biswas
Heard on : 5th January 2023
Judgment on : 5th January 2023

The Court:

The petitioner challenges the order dated 06.8.2022 passed by the learned Additional District and Sessions Judge, F.T.C – I at Alipurduar, Jalpaiguri in Sessions Case No. 392 of 2017 arising out of G.R. Case No. 1705 of 2017 under Sections 302/34 of the I.P.C.

By the order impugned, at the behest of the learned Public Prosecutor learned Trial Court invoked the provision of Section 311 of the Code of Criminal Procedure to recall P.W. 3, Sujoy Das who being summoned by the learned Public Prosecutor appeared before the Court and identified his signature in the seizure list but at that point of time prosecution could not produce the incriminating weapon allegedly used in the offence as it was in the custody of Regional Forensic Science Laboratory, Jalpaiguri.

Learned counsel representing the petitioner assailing the impugned order submits that it is nothing but an attempt of the prosecution to fill up lacuna in the prosecution case and the impugned order would take away the benefit acquired by the accused person because of non-production of incriminating

weapon in trial. It would cause a serious prejudice to the accused person if the order remains in force.

Refuting such contention of Mr. Biswas, learned counsel representing the State submits that in order to arrive at a just decision the Code of Criminal Procedure has conferred power upon the learned Trial Court to recall summon material witness or examine any person at any stage of the enquiry trial or other proceeding including re-examination and recall of witnesses. Learned Trial Court did not commit any jurisdictional error while passing the order impugned.

According to Mr. Biswas no prejudice could cause to the accused person as there would be an opportunity of cross-examination of the witness recalled.

Section 311 of the Cr.P.C. is held as under:-

“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.”

Section 311 of the Cr.P.C. is a supplementary provision enabling the Court and in certain circumstances imposing upon the Court the duty of examining any material witness in order to secure ends of justice. The object underlying in Section 311 of the Cr.P.C. is that there may not be failure of justice on account of mistake of either party in bringing valuable evidence on record, the factor that determines the exercise of such jurisdiction is whether it is essential to the just decision of the case. True, it is as the power is vested upon the Court, the Court should exercise such jurisdiction upon subjective satisfaction considering the facts of the case.

I cannot throw the argument advanced by the learned counsel appearing on behalf of the petitioner overboard when it is indicated that learned Public Prosecutor is inviting the Court to exercise such jurisdiction which shows that learned Trial Court while holding trial never considers it necessary to exercise

the power conferred upon the Court in the supplementary provision of Section 311 of the Cr.P.C. which comes within Chapter XXIV of the Cr.P.C.

As I have already pointed out underlying the object of Section 311 of the Cr.P.C. is that there may not be failure of justice on account of mistake of either of the parties, in bringing valuable evidence on record. Keeping that object in mind, I am inclined to set aside the order passed by the learned Trial Court at the behest of the learned Public Prosecutor. While doing so I am inclined to hold that provision of Section 311 of the Cr.P.C. should be invoked in the interest of justice.

Liberty is given to learned Trial Court to exercise the jurisdiction vested under Section 311 Cr.P.C. if learned Trial Court considers it necessary to invoke the same to secure ends of justice, independently upon subjective satisfaction, after considering the facts and circumstances of the case. Opportunity to cross-examine the witness should be given to the parties. Power should be exercised independently and not at the behest of either learned Public Prosecutor or by the learned defence counsel.

With these observations the criminal revision is disposed of.

Let a copy of this order be sent down to the learned Trial Court for information and necessary action.

Urgent Photostat certified copy of this order, if applied for, be given to the parties upon completion of requisite formalities.

(Siddhartha Roy Chowdhury,J)