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15.05.2024
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C.R.R.201 of 2024

In Re: An application under Section 482 read with Section 401 of the
Code of Criminal Procedure, 1973;

Parbon Mukherjee @ Ujjwal
Versus
The State of West Bengal and another

Mr. Soumyajit Das Mahapatra
Mr. Soumya Basu Roy Chowdhury
Ms. Madhurai Sinha.
...for the petitioner.

Mr. Debasish Roy, Ld. P.P.
Mr. Arijit Ganguly
Ms. Sreemoyi Roy.
...for the State.

Supplementary affidavit filed by the petitioner be kept
with the record.

The petitioner is aggrieved by the order dated 08.12.2023
passed by the learned Additional District and Sessions Judge,
Gangarampur at Buniadpur, Dakshin Dinajpur in S.T. Case No.87
of 2016 arising out of Banshihari Police Station Case No.155 of
2015 dated 12.11.2015.

Petitioner preferred an application under Section 311 of
the Code of Criminal Procedure. On date fixed for arguments in the
application under Section 311 of the Code of Criminal Procedure
petitioner preferred for recall of P.W.12, namely, Kamal Sarkar,
P.W.15, namely, Dr. Hrishikesh Mitra, P.W.20, namely, Tafiuddin
Ahamed and P.W. 21, namely, Arun Kumar Yadav, the investigating
officer of the case for further cross-examination.

I find from the records of the case that P.W.12 was examined in the year 2017 and P.W.15 was examined in the year 2018. I have also taken into account the purpose for which the petitioner intended to prefer an application under Section 311 of the Code of Criminal Procedure. The same is because of challenging the truthfulness and trustworthiness in respect of the incident which was deposed by the witness no.12 is concerned.

Learned advocate appearing for the petitioner submits that there is documentary evidence which would go to show that the oral deposition of P.W.15 runs counter.

At the fag end of the trial when an application under Section 311 of the Code of Criminal Procedure is taken out, it is the duty of the party taking out such application to show that he is not feeling up the lacuna of the case. A bare omission and generalised version of being prejudiced cannot be a ground for invoking the powers under Section 311 of the Code of Criminal Procedure at the argument stage nor it is permissible that the defence will understand whole of the case after the evidence is over and thereafter will cross-examine the witnesses further on the issue which are to their advantage.

On an assessment of the application which has been preferred by the petitioner and the issues so canvassed under Section 311 of the Code of Criminal Procedure, I do not find any illegality in the order considering the time-frame, the issues proposed to be canvassed as also the period which has lapsed in the trial of the case.

Having regard to the same, I am not inclined to interfere with the impugned order dated 08.12.2023 passed by the learned Additional District and Sessions Judge, Gangarampur at Buniadpur, Dakshin Dinajpur in S.T. Case No.87 of 2016 arising out of Banshihari Police Station Case No.155 of 2015 dated 12.11.2015.

Accordingly, CRR 201 of 2024 is dismissed.

Pending connected application, if any, is consequently dismissed.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Tirthankar Ghosh, J.)