

**IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
Appellate Side**

Present:

The Hon'ble Justice Biswaroop Chowdhury

***CRR 2298 of 2024
Mohitosh Biswas & Ors.***

VERSUS

The State of West Bengal & Anr.

for the petitioner:

Mr. Sandip Chakraborty, Adv.

Mr. Amanul Islam, Adv.

Mr. Debasis Kar, Adv.

Mr. Sourav Mukherjee, Adv.

Mr. Kaustav Das, Adv.

for the State:

Mr. Bibaswan Bhattacharya, Adv.

Mr. Mamata Jana, Adv.

Last Heard on: October 03, 2024

Judgment on: October 08, 2024

Biswaroop Chowdhury, J:

This application is directed against Order dated 24.04.2024 passed by the Learned Additional District and Sessions Judge Tehatta Nadia in SC Case No. 25(05) of 2017 ST No-8(12) of 2017 in connection with Murutia Police station case No. 53/11 dated 8.05.2011 rejecting the petition filed by Learned Advocate for the defence praying for cross-examination of P.W.1 and C.S.W.2 and 3 together.

The ground of the petitioners in the petition under Section 231(2) CrPC is that P.W.-1 and other witnesses are interested witnesses and if they are not cross examined together the defence of the accused persons would be disclosed. The Learned Trial Judge upon considering the Petition and upon hearing the Learned Advocates was pleased to dismiss the petition under Section 231(2) CrPC by observing and directing as follows:

I have gone through the provisions u/s. 231 CrPC which provides Evidence for prosecution. Section 231(2) CrPC provides the Judge may in his discretion permit the cross examination of any witness to be deferred until any other witness or witnesses have been examined or recall any witness for further examination.

Now the ground has been mentioned in the petition that the PW-1 and other witnesses are interested witnesses and if they are not cross-examined together the defence of the accused persons would be disclosed. This statute clearly indicates and gives power to the Court to apply its discretion for permitting the cross-examination of any witness to be deferred.

In this case, I do not find any justification to allow the cross-examination of the witnesses as mentioned together after completion of examination in-chief of them. This Court requested the Ld. Advocates for the defence to continue the cross-examination of P.W.1 and also expresses its opinion that CSW 2,3 be examined and cross examined on a single day but the Learned Advocates for

the defence did not agree with the same. I further opined that the petition has been filed with a view to delay the trial and nothing else.

Accordingly the petition filed by the Ld. Defence counsels is considered and rejected.

Fix 02.09.24 for cross examination of PW-1

Fix 03.09.24 for examination of CSW-2 and 3.'

The petitioners being aggrieved by the Order passed by the Learned Trial Judge has come up with the instant application.

It is the contention of the petitioners that the Learned Trial Court acted with material irregularity and without considering the materials in record. It is further contended that C.S.W-2 and C.S.W.3 are close relatives of P.W-1 which has also come from the examination of P.W.1 and they are interested witnesses which the Learned Court failed to consider. It is also contended that the Learned Court failed to consider that 231(2) of the Code of Criminal Procedure empowers the Learned Trial Court to exercise discretion but in this case though specific reason was assigned for deferring the cross-examination of P.W-1 until the examination of C.S.W-2 and C.S.W-3 completed but it was not exercised judiciously.

Heard Learned Advocate for the petitioners and Learned Advocate for the opposite party, perused the petition filed.

Learned Advocate for the petitioners submits that CSW-1 C.S.W-2 and C.S.W-3 are close relatives and unless their examination in chief is complete defence will be disclosed. Learned Advocate submits that the order passed by Learned Trial Court cannot be sustained Learned Advocate relies upon the following Judicial decision.

Sunita Devi

Vs

The State of Bihar and Anr.

Reported in 2024 5 SCR-629

Before proceeding to decide the issue it is necessary to consider the provisions contained in section 231 of the Code of Criminal Procedure 1973 Section-231- of Code of Criminal Procedure provides as follows:

231. Evidence for prosecution.

1) on the date so fixed the judge shall proceed to take all such evidence as may be produced in support of the prosecution.

2) The judge may in his discretion permit the cross examination of any other witness or witnesses to be deferred until any other witness or witnesses have been examined or recall any witness for further cross-examination.

In the case of Sunita Devi (supra) the Hon'ble Supreme Court observed as follows:

‘22. These two provisions are to be read in consonance with each other. At this stage, the Court is concerned only with the prosecution’s evidence. To ensure fair play, as a normal practice, the Court has to fix a date for the examination of the witnesses. The idea is to complete the examination-in-chief and cross examination, both at the same time. While fixing the date, the Court is expected to take into consideration the relative convenience of the parties, though the discretion lies with it. Sub-section (1) of Section 231 of the CrPC, 1973 fixes a responsibility on the Court, the prosecution and the defence to go ahead with the examination of witnesses on the date so fixed. Therefore, even for this reason, the Court shall ascertain and then decide a convenient date for both sides, while being conscious about any attempt to drag the trial. Completion of such examination is a matter of rule as any deferment can at best be an exception, to the discretion of the Court. Obviously, the use of such a discretion, being judicial in nature, has to be on a case-to-case basis. Suffice it is to state that a balance has to be struck between the competing interests.

State of Kerala v. Rasheed, (2019) 13 SCC 297

“22. There cannot be a straitjacket formula providing for the grounds on which judicial discretion under Section 231(2) CrPC can be exercised. The exercise of discretion has to take place on a case-to-case basis. The guiding principle for a Judge under Section 231(2) CrPC is to ascertain whether prejudice would be caused to the party seeking deferral, if the application is dismissed.

23. While deciding an application under Section 231(2) CrPC, a balance must be struck between the rights of the accused, and the prerogative of the prosecution to lead evidence. The following factors must be kept in consideration:

- i) possibility of undue influence on witness(es);
- (ii) possibility of threats to witness(es);
- (iii) possibility that non-deferral would enable subsequent witnesses giving evidence on similar facts to tailor their testimony to circumvent the defence strategy;
- (iv) possibility of loss of memory of the witness(es) whose examination-in-chief has been completed;
- (v) occurrence of delay in the trial, and the non-availability of witnesses, if deferral is allowed, in view of Section 309(1) CrPC.'

Upon perusing section 231(2) CrPC it appears that discretionary power is given to the Court to permit the cross examination of any witness to be deferred which is to be decided on the facts of every case. The Hon'ble Supreme Court in the case of State of Kerala Vs Rashid (supra) has laid down the guidelines to be followed with regard to different cases and the discretion has to be on a case to case basis. While disposing application under Section 231(2) CRPC, all the above factors should be taken into consideration and not a particular factor.

In the order passed by Learned Trial Judge dated 24/04/2024 it appears that the Learned Court has considered the delay aspect and have ignored the other aspects about the defence being disclosed or the accused being prejudiced.

The Hon'ble Supreme Court in the case of J.Jayalittaa Vs State reported in (2014) 2 SCC 401 observed that Fair Trial is the main object of criminal procedure and such fairness should not be hampered or threatened in any manner. Fair Trial entails the interest of the accused, the victim and of the society. Thus fair Trial must be accorded to every accused in the spirit of the right to life and personal liberty and the accused must get a free and fair, just and reasonable trial on the charge imputed in a criminal case.'

As an accused person should get a reasonable opportunity to defend himself it must be seen whether by disclosing the defence the reasonable opportunity of defence is curtailed or extinguished, or whether the prosecution in such circumstance of disclosure of defence is getting opportunity to fill up the lacuna in the case.

In the event two views are available as to whether defence of the accused is disclosed to the prejudice of the accused the accused should be given the benefit and cross-examination should be deferred. However the Courts should also see that trial is not unnecessarily delayed and hence should fix the dates of evidence accordingly. In the instant case upon perusing the order passed by the Learned Trial Court and considering the facts of the case this Court is of

the view that the Learned Defence Advocate has given a reasonable ground to defer the cross examination of P.W.1 till completion of Examination in chief of P.W. 2 and P.W.-3.

Thus this Revisional Application stands allowed. Order dated 24-04-2024 passed by Learned Additional District and Sessions Judge Tehatta Nadia in S.C. case No. 25(05) of 2017. ST No-8/12 of 2017 is set aside. Learned Trial Court is directed to defer the cross-examination of P.W-1 till completion of examination in chief of P.W. 2 and P.W. 3. As the case is pending from 2017 Learned Trial Court is requested to dispose of the case expeditiously without granting unnecessary adjournment.

Urgent photostat certified copy of this order, if applied for, should be made available to the parties upon compliance with the requisite formalities.

(Biswaroop Chowdhury, J.)