

CRR 3625 of 2022

Debasish Pandey @ Shanti Pandey & ors.
Vs.
The State of West Bengal

Mr. Arindam Jana
Mr. Arhan Sengupta
Mr. Prithish Bandyopadhyay
Mr. Partha Pratim Sinha
Ms. Tanusree Kar
Mr. Oishij Mukhopadhyay ...for the petitioners

Mr. Debasish Roy
Mr. Saryati Datta
Mr. Arabinda Manna ...for the State

This is an application under Section 482 read with Section 401 of the Code of Criminal Procedure where the petitioners application for recalling PW 10 and PW 15 were rejected by the court below by the impugned order dated 28.6.2022. Learned court below while rejected the prayer made by the petitioner, observed that the petitioner accused wants to fulfil their lacuna and therefore he was not inclined to allow the said prayer.

Learned counsel for the petitioner referring a judgment of the Apex Court in V.N. Patil Vs. K. Niranjan Kumar and Others reported in (2021) 3 SCC 661, submits that the determinative factor in such cases is whether it is essential to the just decision of the case. The court below nowhere observed that for determination of the dispute, the questionnaire put by the petitioner is irrelevant and is not required for the purpose of adjudication of the case. Accordingly, the order impugned is liable to be set aside and the petitioner may be given an opportunity for

a day so that he can re-examine the witnesses as per prayer made in the application.

Learned counsel for the State raised objection contending that the prayer has been made only to drag the proceeding and the questionnaire framed in the application is not at all required for the purpose of adjudication of the case.

I have considered the submissions made by both the parties. It appears that in the application for recalling PW 10 and PW 15, the petitioner has put questionnaire for re-examining PW 10 but for PW 15, he has not put any such questionnaire. He has only stated that for removing the ambiguity and contradictions, the PW 15 i.e. Investigating Officer is required to be examined. I do not find any substance in the said prayer unless it discloses as to what questions are required to be put to the Investigating Officer by way of re-examination, for removing any alleged ambiguity or contradiction. Accordingly, the prayer in connection with PW 15 is rejected.

However, so far as the prayer in connection with PW 10 is concerned, I find that there are six questions framed by the petitioner and the questions are apparently not irrelevant and cannot be said vexatious or malafide or is an abuse of the process of the court

It is trite law that the court has to exercise its discretion in a judicial manner. Here the petitioner seeking further cross-examination of PW-10, has specifically indicated the purpose for which he is to be reexamined.

Needless to say that cross-examination is the only tool available to a defence lawyer to test the veracity of a prosecution

witness and it is the only way out to an accused to establish his innocence and as such his right to cross-examine or re-examine a witness cannot be curtailed merely assuming that he has attempted to fill up his lacuna. The court must see that there may not be failure of justice on account of leaving any ambiguity in the statements of the witness examined from either side.

In such view of the matter, the present application being CRR 3625 of 2022 is disposed of with a direction upon the court below to recall PW 10 and to allow the accused petitioner herein to put only six questions mentioned in the application for recalling dated 24th April, 2022 and to conclude the aforesaid further cross-examination of the said witness preferably within a period of six weeks from the date of communication of the order.

CRR 3625 of 2022 is accordingly disposed of.

Upon Photostat certified copy of the order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Ajoy Kumar Mukherjee, J.)