

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS.

CRR 1282 OF 2025

XXX

VS

THE STATE OF WEST BENGAL & ANR.

For the Petitioner : Ms. Nandini Chatterjee, Adv.

For the Opposite Party

No. 2 : Mr. Sourav Chatterjee, Adv.

Mr. Sourya Nag, Adv.

Ms. Namrata Chatterjee, Adv.

Mr. Rajdeep Sengupta, Adv.

For the State : Mr. Partha Pratim Das, Adv.

Mr. Abhinaba Mukherjee, Adv.

Last heard on : 01.12.2025

Judgement on : 23.12.2025

Uploaded on : 23.12.2025

CHAITALI CHATTERJEE DAS, J. :-

1. This is an application filed under Section 397/401 of the Code of Criminal Procedure read with Section 482 of Cr.Pc, 1973 and corresponding to Section

438/442 of BNSS 2023 read with Section 528 of BNSS 2023 filed for quashing and or setting aside the order dated 13th of August 2024 whereby the application filed under Section 311 of the code of Criminal procedure 1973 has been allowed.

Fact of Case

2. The petitioner is a victim girl and the offence pertains to a human trafficking for immoral purpose where the petitioner was procured for commercial, sexual exploitation and thereafter sold for money. That apart she is a victim of social economic, physical and mental violence at the hand of the accused persons. Her mother lodged the complaint against the present Opposite Party no. 2 and others to the effect that on January 29,2023 at about 16.00 hours her daughter left home and did not return in spite of search she could not be found and then after conducting the investigation a charge sheet was submitted on April 6,2023 under Sections 363/365/366A/370/370A/372/373/376(2n)/120B of Indian Penal Code, 1860 and Section 6(1) of POCSO Act, 2012 against six accused persons. The charge was framed on December 8, 23 and the trial commenced. The present petitioner adduced evidence on February 27, 2024 and March 15,2024 and after the conducting advocate duly conducted the cross-examination with all competency on 13th August,2024 when the date was fixed for evidence the O.P. No. 2 filed an application under Section 311 of the Code of Criminal Procedure 1973 in the most frivolous manner mentioning that at the time of cross-examination of P.W. 1, the Junior Advocate failed to put certain vital question to P.W. 1 was further cross-examination on P.W. 1 is necessary. After that the Learned Court by order dated August 13,2024 allowed such prayer against which this revisional application has been filed. The Learned

Advocate submits that the Learned Court while passing such impugned order has not considered the materials on record and failed to observe any tangible and cogent reason to show as to why such recall was necessary. It is submitted that the power under Section 311 of the code of Criminal Procedure 1973 is to be invoked by the Court in order to meet the ends of justice and in sensitive case it causes undue hardship and harassment for the victim specially so of heinous crime. If they are repeatedly require to appear in Court for cross-examination. This application is frivolous and is liable to be set aside.

- 3.** The Learned Senior Advocate on the other hand submits that at the outset submits that the matter pertains to POCSO case and the petitioner herself has affirmed affidavit after coming to this Court it was not mentioned in her petition that she was heavily pregnant; no document in support of her pregnancy has been filed. The Opposite Party is in custody since 2023, it was his valuable right as an accused which could not be exercised because of the fault on the part of a junior member of bar and that is the reason why the application for recall has to be filed. It is submitted that the accused is equally entitled to have the protection of law. The prosecution has not filed the application under Section 311 which was the duty to file in order to dig out the truth. It is further submitted that the very purpose of the Section 33 (5) of the POCSO Act was incorporated in order to stop harassment to the victims of POCSO cases and therefore the Courts were directed to ensure that the victims are not repeatedly asked for to appear before the Court to testify but in this case the victim had to come more than once for the purpose of examination in chief which continued for two days and after that she also faced the cross-examination.

4. That apart presently she has attend majority and therefore the object of 311 in this case becomes diluted. The further argument advance by the Learned Senior Advocate is that the petitioner is not the principal accused but he was not identified by the victim and he has been arrayed as an accused of serious charges. The Learned Advocate has relied upon the decision reported in **Manju Devi vs. State of Rajasthan and another**¹ where it was held that the discretionary powers like those under Section 311 Cr.Pc are essentially intended to ensure that every necessary and appropriate measure is taken by Court to keep the record straight and to clear any ambiguity in so far as the evidence is concerned as also to ensure that no prejudice is caused to anyone. It was held further that “though it is expected that the trial of session case should proceed with reasonable exploitation and pendency of such a matter for about 8 to 9 years is not desirable but then the length duration of a case cannot displace the basic requirement of ensuring the just decision after taking all the necessary and material evidence on record.
5. The Learned Senior Advocate further relied upon the decision of **Bonneswar Dutta and others reported in**² where regarding affirming the affidavit by the system of tathbirkar was deprecated in paragraph 22 it was held if the system of Tathbirklar filing application under Section 488 of the Code of Criminal Procedure is allowed to continue that would be encouraging a system contrary to law and that would encourage tautism and middle man ship in the legal system and this system is down to cause destruction to the present judicial system. If middle man have to spot expecting that they are doing this for

¹ (2019) 6 SCC 203

² 1998 SCC Online Cal 13

wrongful gain. Possibility of such making wrongful gain is there and this is also admitted by the members of the bar before this Court that the lawyers when moving an anticipatory bail could not get any instruction for the applicant nor could they see the face of the applicant. There may be cases where the applicant may stay in a foreign country or in remote place of the country hiding himself and mere sending a vokalatnama and merely on the basis of vokalatnama sent by some means, the middle man and or tadbirkar who are nothing but tout could not be allowed to function and it does not require the exercise of any skill and or research that these persons are polluting the system. The Learned Advocate representing the state raises objection and submits that hand over the copy of the case diary at the application is an interlocutory application.

Analysis

6. Heard the submissions. The case pertains to an application filed under Section 311 of Cr.Pc for recalling of the witness of the victim/petitioner after conclusion of the evidence of the victim. In this case the allegation levelled against the accused persons including the present petitioners on the basis of the complaint lodged by the mother of the present petitioner when she went missing and on investigation the charge sheet was submitted under Section 6(1) of the Protection of Children from Sexual Offences Act. The bail application of the accused person and in respect of the present petitioner was refused on number of occasions and he is facing the custodial trial. The charge was framed by the Learned Court and the trial commenced and the present petitioner adduced evidence as P.W. 1 on 27th February, 2024. Her examination in chief continued thereafter on 15th of March, 2024 and the cross-examination on behalf of the

present petitioner was also concluded on 15th of March, 2024. In this case an affidavit in opposition has been filed on behalf of the O.P. no. 2 affirmed by the son of the present O.P. no.2 in this case interestingly the application for recalling of the witness has not been commenced other by the petitioner or by the present O.P. no. 2 while filing the affidavit in opposition .

7. On perusal of the order passed by the Learned Trial Court it is seen that on august 13, 2024 the petitioner was taken up for hearing and the application under Section 311 was considered by the Learned Court which was reflected in the order sheet which reveals that the junior Advocate of the accused person failed to put certain vital question to P.W. 1 and hence prayed for further cross-examination of P.W. 1. On behalf of the prosecution objection was raised to the extent that in order to fill up the lacunae on the part of the defence, the accused person as tried to recall the witness in order to delay and dispose of the case. The Learned Court consider the scope and object of the provision and that the power must be exercised judiciously nor capriciously or arbitrarily but only to be invoke in order to meet the ends of justice for strong and valid reason. The Learned Court further held that the determinative factor should therefore be whether the summoning or recalling of the said witness is in fact essential to the just decision of the case.

8. Accordingly such prayer and P.W. 1 was re-called. On perusal of the record it transpires that on 15th of March, 2024 an elaborate cross-examination took place on behalf of the other co-accused as well as on behalf of this present O.P. No. 2. The Learned Senior Advocate has stated before this Court that he is not the principal accused and therefore it can be found that the cross-examination on behalf of this O.P. no. 2 was not that much elaborate as of the other co-

accused person. It is the settled principal of law that Section 311 of the Criminal Procedure Code deals with power to summon material witnesses or re call and re-examination the witnesses and the power is discretionary one and must be exercised judiciously. In the decision of **Satbir singh vs State of Haryana & others**³ taking note of the decision of **Ratanlal versus Prahlad Jat & others**⁴ where it was observed in paragraph 17 that:

17. *“In order to enable the court to find out the truth and render a just decision, the salutary provisions of Section 311 are enacted where under any court by exercising its discretionary authority at any stage of inquiry, trial or other proceeding can summon any person as witness or examine any person in attendance though not summoned as a witness or recall or re-examine any person already examined who are expected to be able to throw light upon the matter in dispute. The object of the provision as a whole is to justice not only from the point of view of the accused and the prosecution but allows from the point of view of an orderly society. This power is to be exercised only for strong and valid reasons and it should be exercised with caution and circumspection. Recall is not a matter of course and the discretion given to the court has to be exercised judicially to prevent failure of justice. Therefore, the reasons for exercising this power should be spelt out in the order”.*

9. In **State (NCT) of Delhi versus Shiv Kumar Yadav**⁵ it was observed that “mere observation that re call was necessary for ensuring fair trial” is not enough unless there are tangible reasons to show how the fair trial would suffer without recall. In the instant case from the document annexed with the petitioner it appeared that the bail application on behalf of the accused persons including

³ 2023 SCC Online SC 1086

⁴ (2017) 9 SCC 340

⁵ 2016 2 SCC 402

the present petitioner was not considered. Considering the deposition and the co-ordinate bench passed such order considering the deposition of the victim girl where from it revealed that the accused petitioner was very much involved in the alleged crime and the bail was levelled on the ground that if at that stage such prayer for bail was granted there is every possibility of hampering in the progress of trial. The argument advanced by the Learned Senior Advocate regarding the valuable right of the accused person to defend is and well accepted legal position and in this case it cannot be said that opportunity was not given to the O.P. to exercise his right. He did not prayed for time for further cross-examination on 15th of March when the evidence of P.W.1 was continuing and on conclusion of the cross-examination by him the entire evidence was concluded by the Court. The application was also not filed immediately after closing of such evidence and the application under Section 311 of the Code of Criminal Procedure 1973 was filed on 13th of August, 2024 when the further date was fixed for evidence that means after 5 months from the evidence of P.W. 1. In absence of the petition this Court is unable to consider the content of the application even though the affidavit in opposition has been filed by the petitioner such application has not been annexed but in the order-sheet also not other reasons has been reflected excepting the ground taken by the Learned Advocate that the Learned Judicial Member of bar did not put certain question to the P.W. 1.

10. Therefore the contention of the Learned Senior Advocate that there was a denial of the opportunity to the accused person which would cause prejudice to the defence and may affect the fairness ,correctness and credibility of the final adjudication cannot be considered . In view of the above discussion as the O.P.

no. 2 miserably failed to make out any cogent and tangible ground for which he should have given an opportunity to further cross-examination the P.W. 1 on recall after 5 months of the conclusion of the evidence. The order passed by the Learned Court while allowing such prayer is devoid of any reasoning as to why such prayer was allowed and said order suffers from judicial defect and illegal which warrants interference by this Court. Now the further point raised on behalf of the Learned Senior Advocate that the present petition is an interlocutory application and hence the revisional application is not maintainable by way of affidavit in opposition relied upon the decision of Supreme Court in ***Sethuraman versus Rajamanickam reported in***⁶ and therefore this revisional application is also not entertainable. It is seen that the application has been filed under Section 397,401 of the Code of Criminal Procedure 1973 read with Section 482 of the Code of Criminal Procedure and therefore this Court has the power to exercise an authority to invoke Section 482 of Cr.Pc whereby the present petition can be said to be maintainable.

Conclusion

11. It is also a settled principal of law that when there was a gross abuse of the process of law this Court could not hesitate to exercise the view under Section 482 and in this case the present petitioner being a victim lady. In connection with an evidence of trafficking whereby the present O.P. no 2 is suffering the custody trial since long and his bail application has been refused on repetitive occasion and Learned Court has passed the order without assigning any reason allowing the present victim lady to examine on re-call this Court has exercised the power under Section 482 and hence is inclined to interfere with such order.

⁶ (2009) 5 SCC 153

12. Hence this Criminal revisional Application stands allowed .The order to recall the petitioner being the victim lady is hereby set aside.

13. No order as to costs.

14. Urgent certified copy of applied be given at an earliest subject to fulfilment of all other requirements.

(CHAITALI CHATTERJEE DAS,J.)

