

19.06.2025
SL No.6
Court No.32
S.Gayen

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

CRR 2723 of 2024
with
CRAN 3 of 2025

**Sanjib Karmakar @ Gopal Karmakar
Versus
The State of West Bengal & Anr.**

Mr. Sarnya Bose Ray Chowdhuri

...for the petitioner

Mr. Debasish Roy, Ld. PP
Ms. Saryati Datta
Ms. Sreetama Das

...for the State

1. Affidavit of service filed by the petitioner is taken on record.
2. None appears on behalf of the opposite party No.2.
3. This revisional application has been filed assailing the order No.12 dated 14.05.2024 passed in connection with Sessions Trial No. 319 of 2023, wherein the learned Additional Sessions Judge, 2nd Court, Howrah refused an application under Section 231(2) of CrPC [254(3) of BNSS], whereby the petitioner prayed for deferring cross-examination of CSW1 till the examination-in-chief of CSW2 and CSW3 on the ground that they are all members of same family (mother, son and daughter-in-law).
4. The learned Judge relying on the guidelines handed down by the Hon'ble Apex Court in ***State of Kerala vs. Rasheed*** reported in **(2019) 13 SCC 297** passed the following order:-

“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.”*

5. Both the learned counsel appearing on behalf of the petitioner as well as State have referred to the guidelines laid down in **Rasheed** (supra).

“In view of the aforesaid decisions, there remains no doubt that deferral of cross-examination u/s 231(2) of Cr P C till the examination of other close relative witnesses is not the right of the defence. Moreover, no such prayer was made by the defence when after framing of charge schedule of examination of witnesses was prepared. Considering aforesaid decisions, I am not inclined to allow the prayer u/s 231(2) Cr P C filed on behalf of the accused. Thus petition is rejected.

CD be returned.

To 10.06.24 for production and cross-examination of PW-1.

Inform Jail authority.”

6. Section 231(2) of CrPC [254(3) of BNSS] makes it clear that the learned Judge can exercise his discretion by allowing the cross-

examination of any witness to be deferred until examination-in-chief of any other witnesses.

7. The facts of the case relied upon by the learned Judge are not identical to the facts of the case in hand. In this case, undisputedly, the relationship between the CSW1, CSW2 and CSW 3 is close to the extent of being in the same family.
8. In the view of aforesaid facts together with the principle laid down in ***Rasheed*** (supra) particularly in paragraph 23 (iii), in my humble opinion, the learned Judge ought to have exercised the discretionary power envisaged in Section 231(2) of CrPC [254(3) of BNSS].
9. As a sequel, the impugned order dated 14.05.2024 stands set aside. The prayer of the application under Section 231(2) of CrPC [254(3) of BNSS] stands allowed.
10. Prosecution is directed to produce CSW2 and CSW3 before the Court on the date fixed by the learned Judge and in that event, learned counsel appearing on behalf of the accused before the learned Trial Court shall cross-examine CSW1, CSW2 and CSW3 on the same date.
11. With the aforesaid observations, the revisional application stands disposed of.
12. Interim order, if any, stands vacated and connected application, if any, also stands disposed of accordingly.
13. Parties are at liberty to communicate this order to the learned Judge for information.
14. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

15. Urgent Photostat certified copy, if applied for, be given to the parties upon compliance with all requisite formalities.

(Bibhas Ranjan De, J.)