

**Form No. J(2)**

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

Present:

**The Hon'ble Justice Jay Sengupta**

**C.R.R. 3716 of 2024**

**Nimai Ratan Ghosh**

**-vs-**

**State of West Bengal & others.**

For the Petitioner : Mr. Soubhik Mitter

For the State : Mr. Arijit Ganguly  
: Mr. Abhishek Verma

Heard on : 02.04.2025

Judgment on : 02.04.2025

**Jay Sengupta, J.:**

This is an application challenging an order passed by the learned Special Judge, 1<sup>st</sup> Court, Malda on 31<sup>st</sup> July, 2024 in Special Case No. 21 of 2008 directing examination of the accused under Section 313 of the Code of Criminal Procedure, 1973.

Learned senior counsel representing the petitioner submits as

follows. Admittedly, the Investigating Officer of the case passed away during trial in the course of examination. By an order dated 02.07.2022, the BDO (P.W.5) was directed to produce the documents in question and he was directed to adduce further evidence under Section 311 of the Code of Criminal Procedure. But, thereafter he never turned up. But, the Inspector in Charge, Gazole Police Station was asked to inform the concerned BDO. In fact, even in the order dated 31.07.2024, it was recorded that a copy of the order along with the order dated 01.07.2024 was to be sent to the Inspector in Charge, Gazole Police Station, Malda for his information and necessary compliance. Yet, in the same order the learned Judge went on to fix a date for examination under Section 313 of the Code of Criminal Procedure. This was patently bad in law.

Learned counsel for the State opposes the prayer.

It is quite apparent from the order sheet that after the I.O. passed away, the BDO (P.W.5) was asked to produce certain documents. The Inspector in Charge, Gazole Police Station was to inform the BDO after it was found that the BDO was not appearing in Court. The same was not done. The learned Judge realized this and directed the Inspector in Charge, Gazole Police Station to comply with the order dated 31.07.2024. But, by the same order, he fixed a date for examination of the accused under Section 313 of the Code.

Date for examination of the accused under Section 313 of the

Code could not have been fixed before the examination of the prosecution witnesses was complete.

In view of the above, the impugned order dated 31.07.2024 and the consequential order dated 06.08.2024 are set aside, so far as the direction to fix a date for examination of the accused under Section 313 of the Code is concerned.

The learned Judge shall conclude the examination of the prosecution witnesses after ensuring appearance of the BDO with relevant documents and only thereafter, fix a date for examination of the accused under Section 313 of the Code.

With these observations, the revisional application is disposed of.

Urgent photostat certified copies of this order may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

**(Jay Sengupta, J.)**