

IN THE HIGH COURT AT CALCUTTA
(Criminal Revisional Jurisdiction)
Appellate Side

Present:

Justice Bibhas Ranjan De

C.R.R. 3736 of 2024

With

CRAN 1 of 2024

CRAN 3 of 2025

Sk. Sahir Mohammad

Vs.

The State of West Bengal

For the Petitioner	:Mr. Jayanta Narayan Chatterjee, Sr. Adv.
	Mr. Ranjan Sarkar, Adv.
	Mr. Supreem Naskar, Adv.
	Ms. Jayashree partra, Adv.
	Ms. Pritha Sinha, Adv.

For the State	:Mr. Debasis Roy, Ld. PP.
	Mr. Arijit Ganguly, Adv.

Last Heard on	:08.05.2025
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Judgment on	:22.05.2025
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Bibhas Ranjan De, J.

1. This revision application is directed against the order dated 19.08.2024 passed in connection with Sessions Case No. 426 of 2023 corresponding to Bolpur Police Station Case No.395 of 2023 dated 21.09.2023 under Sections 365/448/323/419/307/364A/395/397/506/120B of the Indian Penal Code (for short IPC) wherein Ld. Trial Judge (Additional Sessions Judge, Bolpur, Birbhum) passed the order in penultimate paragraphs which run as follows:-

“On consent of both sides, fix 05.09.2024, for cross examination of PW 16 and for examination of CSW No. 15, Swapan Kr Ghosh.

To date, for production of accused persons and ER of bailable warrant against PW 16.

Issue summons on CSW No. 15, Swapan Kr Ghosh.

Alamats be produced on the date fixed.

Let a copy of this order be sent to IC, Bolpur PS for information and taking necessary action.”

2. This is a case for abduction of victim where petitioner is the accused and the case was put into trial and Ld. Trial Judge recorded evidence of 15 witnesses and PW 16 (victim of this

case) was examined-in-chief but prosecution could not produce PW16 before the Court for cross-examination on behalf of the accused/petitioner herein.

Argument advanced:-

3. Mr. Jayanta Narayan Chatterjee, Ld. Senior Counsel, appearing on behalf of the petitioner has submitted that Ld. Trial Judge cannot examine the subsequent witnesses produced by the prosecution without cross-examination of PW 16.
4. Mr. Chatterjee has referred to the impugned order dated 19.08.2024, particularly observation of the Court in the following paragraph:-

“...Having considered the submissions of both sides and the execution report submitted by the police authority, it appears to me that PW16 is missing for the time being and his whereabouts is not available. However, the trial has to progress and so, the case is required to be proceeded with for recording of the evidence of rest prosecution witnesses keeping the door open for cross examination of PW16 –Pannacara (victim) as and when he is traced out and made available...”

5. Mr. Chatterjee has submitted that without producing PW16 for cross examination, prosecution cannot examine other witnesses and the cross examination of PW16 cannot be deferred *sine die*. Mr. Chatterjee ultimately prays for expunging the evidence of PW 16. In support of his contention, Mr. Chattejee has relied on the following ratios:-

- ***Chakina Khatun vs. The State of West Bengal & Anr (passed by Co-ordinate Bench of this Court).***
- ***Shailendra Kumar vs. State of Bihar and others, (2002) 1 Supreme Court Cases 655.***
- ***Selvamani vs. The State of Rep. by the Inspector of Police, 2024 INSC 393.***

6. Per contra, Mr. Debasis Roy, Ld. Public Prosecutor, appearing on behalf of the State has seriously contended that in a case of abduction victim is the vital witness for just decision of the case. Mr. Roy has further submitted that PW16(victim) has already been examined-in-chief and after that he was not found traceable and for that reason only the evidence of PW 16 cannot be expunged. Mr. Roy has further submitted that principle of cases relied on behalf of the petitioner has no application to the case at hand.

Analysis:-

- 7.** In ***Chakina Khatun*** (supra) Co-ordinate Bench deprecated the order of expunging the evidence by the Trial Court, which was found perverse.
- 8.** In ***Shailendra Kumar*** (supra) the Court suggested to take appropriate action including issuance of bailable /non-bailable warrants to ensure attendance of witnesses.
- 9.** In ***Selvamani*** (supra) Hon'ble Apex Court dealt with the issue of delay in cross examination of a witness. It was held that cross examination cannot be deferred except in exceptional circumstances.
- 10.** In the case at hand, it is not disputed that PW 16 (victim) is not traceable in spite of repeated efforts. In these circumstances, in my opinion, next witness can be examined after deferring the cross examination of PW16, as long as it is within court's discretion and does not infringe on the rights of the accused.
- 11.** The order in which witnesses are to be produced is generally regulated by the law relating to civil and criminal procedure, if on a particular point there is no provision, the matter shall be determined by the Court in the exercise of its

discretion. Such power has been ratified by the provision of Section 135 of the Indian Evidence Act, 1872.

- 12.** The evidentiary value of PW16 who was not produced for cross examination, can be a subject matter of final hearing but examination-in-chief of PW16 cannot be expunged in absence of any codified law. But, the trial of the case should be proceeded with by examining other witnesses and court can allow the prosecution to produce PW16 for cross examination subject to satisfying the reason for delay.
- 13.** The principle handed down by the cases relied on behalf of the petitioner/accused cannot be applied in dealing with the issue involved in this revision application.
- 14.** However, in compliance with the action suggested in ***Shailendra Kumar*** (supra) Ld. Trial Judge already issue bailable warrant fixing date for cross examination of PW16 and for examination of CSW No. 15. Therefore, no infirmity is found in the order impugned in this revision application.
- 15.** As sequel, the revision application being no. CRR 3736 of 2024 stands dismissed.
- 16.** Connected applications, if there be any, stand disposed of accordingly.

- 17.** All parties to this revisional application shall act on the server copy of this order duly downloaded from the official website of this Court.
- 18.** Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]