

02.04.2025

Sl. no. 96

Ct. No. 29

P.M.

C.R.R. 4926 OF 2023
Amit @ Sumit Barua.
- vs -
The State of West Bengal.

Mr. Debasis Kar
... for the petitioner
Mr. Debasish Roy, Ld. P.P.
Mr. Arijit Ganguly,
Mr. Anindya Sundar Chatterjee
... for the State

Affidavit of service filed by the petitioner is taken on record.

The petitioner herein has assailed the order dated 29.11.2023 passed by the learned Additional Sessions Judge, Fast Track Court III at Barrackpore, North 24-Parganas in S.T. No. 1(5) of 2010 arising out of Noapara Police Station Case No. 173 of 2009 dated 11.11.2009 under Section 498A/307/34/302 of the Indian Penal Code.

It is submitted on behalf of the petitioner that while the charge sheet was submitted before the Court below the prosecution cited 31 witnesses out of which, the S.I. of Police Premendu Dey of Titagarh P.S. and one senior Nurse Amrita Bandopadhyay were cited as serial witnesses No. 29 and 25. Those two persons were present when the victim allegedly made dying declaration.

The main grievance ventilated herein by the accused/petitioner is that the prosecution is not interested to

call those witnesses as the dying declaration is allegedly in favour of the accused person. The petitioner is of the view that the dying declaration is more authentic where the victim allegedly stated that the burn injury was self-inflicted. Therefore, the petitioner preferred an application under Section 311 of the Code of Criminal Procedure, for calling those two witnesses by the Court for adducing evidence and to prove dying declaration to come to a conclusion about cause of death of the victim.

By the order impugned learned Trial Court rejected the petitioner's aforesaid prayer.

Being aggrieved by that order learned counsel for the petitioner submits that the Trial Court did not consider that the said piece of document namely dying declaration is most vital for the adjudication of the case and to unearth the truth. Accordingly he prayed for setting aside the order impugned and for passing direction upon the prosecution to bring those witnesses before the Court below for examination by both the parties.

Learned P.P. appearing on behalf of the State leaves the matter to the discretion of the Court.

Having gone through the order it appears that the Trial Court rejected the said prayer only on the ground that it is the prerogative of prosecution to decide, which witnesses are required to be examined to prove the prosecution case and,

therefore, he did not find any reason to allow the prayer of the defence.

Needless to say that the prosecution's right to withdraw a witness, even if, it might be prejudicial to the accused, is a matter of legal discretion and the court is supposed to consider the circumstances of the case before granting consent. Here the dying declaration has been allegedly recorded in presence of said two witnesses and prosecution also cited them as witnesses in the charge sheet.

There is no quarrel with the proposition of law that the prosecution is not bound to examine all the cited witnesses and it can drop witnesses to avoid multiplicity or plurality of witnesses. In the present case, the court below has not arrived any such reason in support of rejection. While rejecting such prayer, the Court must exercise judicial discretion. Here Public Prosecutor has also a role to act objectively as he is also an officer of the Court and does not act as a part of executive but as a judicial limb. Therefore Public Prosecutor while opposing such prayer made by the accused, must exercise his independent discretion, even if it incurs the displeasure of any unknown force.

In fact, learned Court below has refused the prayer mechanically. He ought to have kept in mind that such withdrawal can be made for proper administration of justice and in public interest. He must have scrutinized whether the prayer

has been opposed in good faith or not because the ultimate goal is to unearth the truth. The Court has to see, whether such opposition or inaction on the part of the Public Prosecutor in withholding the charge-sheeted witness suffers from impropriety or illegality as would cause manifest injustice to the other side. In such cases Public Prosecutor's duty is to inform the grounds of withdrawal to the court and it shall be the duty of the court to appraise itself of the reasons which prompted the Public Prosecutor to withdraw the witness from prosecution. The Court certainly has a responsibility and a stake in the administration of criminal justice and should refrain from making casual remark as if it is prosecutor's paradise to select witnesses. When the matter is for benefit of society there is no scope of being confidential and if such procedure is followed, these chance of favouritism or extraneous considerations would be curbed out.

In such view of the matter, the order impugned dated 14.02.2020 and 29.11.2023 which relates to rejection of the prayer of the petitioner for examining the charge sheeted witness No. 25 and 29 are concerned is hereby set aside. Prosecution is directed to bring the charge sheeted witnesses No. 25 and 29 for examinations and cross-examination by the parties before the Trial Court preferably within a period of 30 days from the order and learned Trial Court is directed to make every endeavour for expeditious disposal of the said sessions

trial, preferably within a period of six months thereafter since the trial is pending for more than a decade.

CRR 4926 of 2023 is accordingly disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties on completion of usual formalities.

(Dr. Ajoy Kumar Mukherjee, J.)