

18.02.2026

Ct. No.42

D/L 78

Mujahid

CRR 345 of 2026

Jagadish Paul

Vs.

The State of West Bengal & Anr.

Mr. Debyendu Chatterjee
Mr. Rahul Deb Goenka
Ms. Satabdi Das
Mr. Mainak Singha Barma
Ms. Sunanda Chatterjee

...for the petitioner

Mr. Soumik Ghosh
Mr. Pradip Saren
Ms. Saheli Hembram

...for the opposite party

Mr. Debasish Roy, Ld. PP
Mr. Rudradipta Nandy, Ld. APP
Ms. Amita Gaur
Mr. Bitasok Banerjee

...for the State

1. Present petition has been filed challenging the order dated 28th November, 2025 passed by the learned Special Court (POCSO), Rampurhat, Birbhum whereby the application filed by the petitioner under Section 311 Cr.P.C. for recalling of PW-8, PW-18, PW-19, PW-24 and PW-25 has been dismissed by the learned trial court.

2. Learned counsel for the petitioner submits that learned trial court has dismissed the application without going into the factual matrix of their case. Learned counsel submits that re-examination of the afore-mentioned prosecution witnesses, is

necessary for the effective disposal of the trial and essential for the just decision of this case. Learned counsel further submits that earlier witnesses were not properly cross-examined by the learned defence counsel. It has further been submitted that it is a serious case in which the petitioners are facing trial for the alleged grave offences under the BNSS as well as the POCSO. Learned counsel has further submitted that it has also come on the record, earlier several times that there had been immense pressure on the petitioners. Learned counsel submits that the grounds on which the application has been dismissed by the learned trial court is not sustainable and, therefore, the same may be set aside and the witnesses, PW-8, PW-18, PW-19, PW-24 and PW-25 be recalled for the purpose of further cross-examination.

3. In support of the submissions, learned counsel for the petitioner has relied upon **Rajesh Agarwal vs. State of West Bengal**, 2011 SCC OnLine Cal 510, **State of Haryana vs. Ram Mehar & Ors.**, (2016) 8 SCC 762. Learned counsel submits that in this case the Apex Court inter alia held that the exercise for recalling of the witness as provided under Section 311 Cr.P.C. can be invoked by the accused or the Court and the Court has to remain sensitive to the cause of justice. Learned counsel submits that it was further inter alia held that the Court while dealing with such an issue has to maintain the balance.

4. Learned counsel for the petitioner has further relied upon **Mohanlal Shamji Soni vs. Union of India**, AIR 1991 SC 1346.

Learned counsel submits that bare perusal of the legislative provisions makes it clear that if the re-examination of a witness is essential to the just decision of the case, it is a mandatory obligation imposed on the Court to recall such witness for the purpose of further examination/re-examination.

5. The written notes of argument have also been filed and the same have been taken on record.

6. Learned counsel for the Public Prosecutor has vehemently opposed the application for the resent revision petition and submits that the same is liable to be dismissed, out rightly. Learned Public Prosecutor submits that initially the application was moved for recalling of PW-8 and PW-18 and subsequently PW-19, PW-24 and PW-25 were added by hand. Learned Public Prosecutor submits that in the entire application, there is no sufficient grounds for mentioned recalling of these witnesses for the purpose of further cross-examination.

7. Learned Public Prosecutor further submits that the intention of the petitioner is only to delay the trial. Learned Public Prosecutor submits that initially the petitioner herein moved a writ petition in WPA 19347 of 2025 for the transfer of the trial. The co-ordinate Bench of this Court vide order dated 29th December, 2025 declined to pass any interim order in the said writ petition.

8. Learned Public Prosecutor further submitted that therefore Manoj Kumar Paul, i.e. the brother of the petitioner and only accused in the case, moved CRR 19 of 2026 for the

quashing of the proceedings on the ground that he had been denied his right to have the defence counsel and application for recalling of the witness is pending disposal and there is a continuous threat meted out to the learned advocate. The co-ordinate Bench of this Court again did not pass any interim order and directed the matter to be placed before the Regular Bench, as the same was filed during the vacation.

9. Learned Public Prosecutor further submitted that then the present petitioner filed another petition CRR 49 of 2026 for the purpose of transfer of the petition, in which initially an interim order was passed by the co-ordinate Bench of this Court on 6th January, 2026 which was extended on 13th January, 2026 and was enforced till 20th January, 2026. Learned Public Prosecutor submits the prosecution filed an application for vacation of the stay and the co-ordinate Bench of this Court was pleased to not further extend interim order vide a detailed order dated 30th January, 2026.

10. Learned Public Prosecutor has strenuously taken this Court through the testimony of PW-8, PW-18, PW-19, PW-24 and PW-25 to demonstrate that theses witnesses have duly been cross-examined by the learned defence counsel at length. Learned counsel for the prosecution submits that except for PW-24 who was a formal witness from FSL all other witnesses were cross-examined at length running into several pages by the defence.

11. Learned Public Prosecutor submits that this is a desperate attempt by the accused to delay trial and to harass the victim. Learned Public Prosecutor further submits that the learned trial court has passed a detailed and reasoned order and there is no reason to interfere in the same. Reliance has been placed in **State (NCT of Delhi) vs. Shiv Kumar Yadav & Anr.**, (2016) 2 SCC 402.

12. The Court has considered the submissions and perused the record carefully. The revision petition has been filed challenging the order passed by the learned trial Court whereby the application under Section 311 Cr.P.C. for recalling of certain prosecution witnesses for the purpose of further cross-examination was dismissed.

13. It is a settled proposition that the revisional court has a limited jurisdiction and it has consistently been held that such a jurisdiction has to be exercised sparingly and with circumspection. The Court while exercising the revisional jurisdiction cannot act like an appellate court. The revisional court can interfere only if there is a manifest-illegality, perversity, impropriety or error apparent on the face of the record passed by the learned trial court.

14. It is also a settled proposition that the revisional court cannot substitute its own view with a view taken by the learned trial court, in regard to the power to be exercised by the Court while dealing with the application under Section 311 Cr.P.C. or 348 of the BNSS. It is a settled proposition that the Court

should have best possible evidence in order to prove or disprove a factual issue. If any evidence which is just and essential for the decision of the case is left, it is the salutary duty of either the prosecution, defence or the Court to ensure that such evidence is brought on record. The trial is not better a battle of wits, it is a quest for justice and it is the duty of all the stakeholders to ensure that on account of technicalities or procedural wrangles, any evidence which is essential for the just decision of the case should not be left. However, it is also the duty of the stakeholders to see that the trial is not unnecessarily prolonged. Delayed trial is a direct violation of the fair trial which is a facet of fundamental right enshrined in the Constitution. The Judge who presides over the court is not merely an umpire at a contest between two parties. The duty of the Judge is to see that all the material evidence has been brought on the record. If a party seeks to examine, recall a witness for the purpose of cross-examination, it is its bounden duty to demonstrate before the Court that what was left was “essential” for the just decision of the case. Apparently, no such plea has been made in the application being made before the learned trial court for recalling of the witnesses. Even, the learned counsel for the petitioner before this Court has not pointed out any material to show that the material which was left out was essential for the just decision of the case.

15. It has consistently been held that if a witness has been cross-examined by the defence, such witness cannot be recalled

for the purpose of cross-examination, only if there is a change of counsel or other circumstances which does not directly effect roots of the case. The recalling of the witnesses not only causes delay in trial, but hardship to the witnesses. Therefore without any cogent reason, the Court cannot mechanically allow the application for recalling of the witnesses. This Court must record that the trial court has very well examined the entire facts on the record and has taken all the pains to write a detailed and reasoned order which does not warrant any interference by this Court.

16. The Court do not find any merit in this revisional application. Hence, the same is dismissed.

17. All parties shall act on the basis of the server copy of this order duly downloaded from the official website of this Court.

(Dinesh Kumar Sharma, J.)