

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
(Appellate Side)

Present: THE HON'BLE JUSTICE RAJARSHI BHARADWAJ

CRR 2880 of 2023
With
CRAN 1 of 2025

Afjal Ali Sha @ Abjal Shaukat Sha

...Applicant

-Vs-

The State of West Benal & Ors.

...Opposite Party

CRR 464 of 2025

Dipak Chakrabarti

...Applicant

-Vs-

The State of West Benal & Ors.

...Opposite Party

CRR 473 of 2026

The State of West Bengal

...Applicant

-Vs-

Anisur Rahaman & Ors.

...Opposite Party

Reserved on : 01.04.2026
Pronounced on: 15.05.2026

Present:-

Mr. Sourav Chatterjee, Sr. Adv.
Mr. Soumya Nag
Mr. Aditya Tiwari

... for the applicant
in CRR 2880 of 2023

Mr. Kaushik Gupta, Sr. Adv.
Mr. Anirban Tarafder

... for the Special Public Prosecutor
in CRR 2880 of 2023

Mr. Ayan Bhattacharjee, Sr. Adv.
Mr. Soumya Basu Ray Chowdhuri
Mr. Amitabrata Hait
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...for the Special Public Prosecutor
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...for the victim/opposite party No.2
in CRR 464 of 2025

Mr. Kaushik Gupta, Sr. Adv.
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...for the opposite Party No.1
in CRR 473 of 2026

Mr. Soumya Nag
Mr. Aditya Tiwari

... for the opposite party No.9
in CRR 473 of 2026

Rajarshi Bharadwaj, J:

1. Three revisional applications, specifically CRR 2880 of 2023 (*Affal Ali Sha @ Abjal Shaukat Sha vs. The State of West Bengal & Ors.*), CRR 464 of 2025 (*Dipak Chakraborty vs. The State of West Bengal & Anr.*) and CRR 473 of 2026 (*The State of West Bengal vs. Anisur Rahaman & Ors.*) have been

instituted by the respective petitioners seeking to challenge various interlocutory orders. All such orders were passed in connection with Sessions Case No. 23 of 2023, which is currently pending adjudication before the Learned Chief Judge, City Sessions Court, Bichar Bhavan, Calcutta. The said Sessions Court proceedings arose out of Panskura Police Station Case No. 495 of 2019, dated 08.01.2019.

2. As the aforementioned matters pertain to the identical criminal trial, i.e., Sessions Case No. 23 of 2023, and implicate various orders rendered by the same Learned Trial Judge which are under active challenge and possess a direct bearing upon the trial of the instant prosecution, it has been deemed expedient to consider the same concurrently.

3. Prior to addressing the substantive merits of each revisional application, this Court deems it necessary to examine the chronological background of the instant criminal proceeding and the matrix of the admitted facts, which emerge from the diverse orders passed by this Hon'ble Court and the Hon'ble Supreme Court. Such factual antecedents are requisite for the *proprio motu* exercise of judicial powers and the proper adjudication of these three revisional applications.

- A. On 08.01.2019, Panskura Police Station Case No. 495 of 2019 was instituted under Sections 302/120B of the Indian Penal Code (IPC) against various accused persons by the complainant, Jahar Sha.
- B. Upon the conclusion of the investigation, the Investigating Agency filed a Charge Sheet in the year 2020 under Sections 302/120B of the IPC and under Sections 25/27 of the Arms Act against ten accused persons.
- C. During the pendency of the trial, while the recording of testimonial evidence was in progress, the State of West Bengal issued a notification under Section 321 of the Code of Criminal Procedure (CrPC) for the withdrawal of prosecution. This notification was subsequently

challenged by Jahar Sha before this Court via Writ Petition Appeal (WPA) No. 6315 of 2021.

- D. During the pendency of the aforesaid writ petition, the Learned Trial Judge, by judgment and order dated 02.03.2021, allowed the application under Section 321 CrPC and acquitted the accused persons on the grounds that the prosecution had been duly withdrawn.
- E. On the very same day, a Co-ordinate Bench of this Hon'ble Court, which was seised of WPA 6315 of 2021, quashed the notification issued under Section 321 CrPC.
- F. In an appeal filed before the Division Bench against the order passed in WPA 6315 of 2021, the Division Bench, without adjudication of the merits, by order dated 13.04.2021, remanded the matter before the Learned Single Judge on a technical ground that one accused person was denied an opportunity of hearing. In clarifying the procedural posture, the Division Bench directed that the legal status existing at the time the Learned Single Judge passed the aforementioned order shall continue.
- G. Following the remand, during the hearing of WPA 6315 of 2021, Jahar Sha, the de facto complainant, sought to withdraw the writ petition alleging undue pressure. At that juncture, Afjal Ali Sha @ Abjal Shaukat Sha, the brother of the deceased, filed an application to be transposed as the sole writ petitioner to continue proceedings. By order dated 28.04.2021, the Learned Single Judge acceded to this prayer. This order was assailed in an Intra Court Appeal filed before the Division Bench in MAT 550 of 2021, wherein the transposition was upheld. It is acknowledged that the Division Bench order effecting the transposition remained unchallenged and is thus final.
- H. Subsequently, despite the State's earlier position favoring withdrawal of prosecution, the trial proceeded, and several witnesses were examined during the trial proceedings. However, during the examination, the majority of witnesses exhibited hostility towards the prosecution case.
- I. At this stage, Afjal Ali Sha, brother of the deceased, approached the Hon'ble Supreme Court of India seeking transfer of the trial to a different State via Transfer Petition (Criminal) No. 409 of 2021. The

Hon'ble Supreme Court, in the initial phase, stayed the trial of the instant case.

- J. During the pendency of the transfer application before the Hon'ble Supreme Court, WPA 6315 of 2021 was finally adjudicated by the Co-ordinate Bench of this Hon'ble Court. By order dated 28.08.2022, the Co-ordinate Bench set aside the notification of withdrawal of prosecution (Memo No. 1188-C/RO/W-14/2021) issued by the State of West Bengal through the Legal Remembrancer and Ex-Officio Secretary to the Government of West Bengal, Judicial Department, along with all consequential actions taken in pursuance thereof. It has been expressly admitted that no party challenged the said order setting aside the Section 321 CrPC notification.
- K. Ultimately, the Hon'ble Supreme Court, in Transfer Petition (Criminal) No. 409 of 2021, issued the following directives:
- i) The Criminal Trial bearing ST No. 1 (03) of 2020 arising out of FIR No. 495/2019 registered at Police Station Panskura, District Purba Medinipur, is ordered to be transferred from the Court of the Additional Sessions Judge, 3rd Court, Tamluk, Purba Medinipur, West Bengal to the Court of the Chief Judge, City Sessions Court, Calcutta.
 - ii) The trial shall be conducted exclusively by the Chief Judge of the City Sessions Court, who shall not delegate the case to any other Additional Sessions Judge.
 - iii) The Chief Judge, City Sessions Court is directed to endeavor to take up the trial on a weekly basis and make every effort to conclude the proceedings within a period of six months.
 - iv) The State of West Bengal is directed to appoint a Special Public Prosecutor upon the recommendations of the Chief Judge, City Sessions Court, Calcutta, subject to the prior approval of this High Court. This assignment shall be effected within two weeks of the order.
 - v) The spouse of the deceased, the Petitioner, and other crucial prosecution witnesses shall be provided with adequate security. The State of West Bengal is directed to ensure that no harm is

caused to the life and liberty of the witnesses, and that no direct or indirect attempt is made by the Respondent No. 2 or any co-accused persons or their proxies to influence, terrorize, or threaten said witnesses.

- vi) The De-facto Complainant, who is also an eyewitness and has ostensibly resiled from the version recorded during the *examination-in-chief*, shall be subjected to cross-examination by the Special Public Prosecutor. The advocate engaged by the Petitioner may provide necessary assistance to the Learned Special Public Prosecutor in this regard.
- vii) Respondent No. 2 and any other accused persons currently in remand shall be transferred forthwith to the Central Jail, Calcutta.
- viii) Respondent No. 2, having regard to his antecedents, and any other accused currently in remand, shall not be granted bail until the conclusion of the trial, save and except by an order of this Hon'ble High Court.
- ix) The Learned Portfolio Judge of the Calcutta High Court is requested to regularly monitor and supervise the trial proceedings in consonance with the directions issued hereinabove.

L. In compliance with the directives of the Hon'ble Supreme Court, a Learned Special Public Prosecutor was appointed at a belated stage. Consequently, the said Prosecutor undertook the exhaustive task of perusing hundreds of pages of the case diary and orders passed in connected proceedings before this Hon'ble Supreme Court and this Court.

M. A material fact emerging from the record is that, notwithstanding the explicit direction from the Hon'ble Supreme Court prohibiting the enlargement of any accused on bail prior to the conclusion of the trial except by the High Court, parole was granted to one of the accused persons, namely Sk. Anisur Rahaman. This order was subsequently interfered with and quashed by a Co-ordinate Bench of this Hon'ble Court in WPA No. 15893 of 2023.

N. It has been informed to this Court that, currently, the examination of witnesses is substantially complete, save and except for those witnesses whose examination may depend on the outcome of the three revisional applications under consideration.

4. This Court shall now proceed to consider the subject matter of the respective revisional applications.

In Re: CRR 2880 of 2023

(Afjal Ali Sha @ Abjal Shaukat Sha - vs. – The State of West Bengal & Ors)

1. CRR 2880 of 2023 challenges the order dated 27.07.2023 passed by the Learned Chief Judge, City Sessions Court, Calcutta. In the said order, an application filed by the Learned Special Public Prosecutor seeking the discharge of the prosecution witness, namely Samed Sha (CSW 25), was rejected, and the prosecution was directed to produce and examine the said witness on the witness dock.

2. The contention of the petitioner is that, as a victim, the petitioner is constitutionally entitled to a just and fair trial. In CRR No. 2880 of 2023, the petitioner filed brief notes of arguments to bolster the issue of *locus standi*, which had previously been raised on behalf of the accused parties. It is argued that the issue of the petitioner's *locus* is no longer *res integra*, particularly in view of the Judgment and Order dated 17.03.2023 passed by the Hon'ble Supreme Court in Transfer Petition (Criminal) No. 409 of 2021, wherein the petitioner's *locus* was challenged and finally adjudicated. It has been contended by the petitioner that in Paragraph 24 of Transfer Petition (Criminal) No. 409 of 2021, the Hon'ble Supreme Court recorded (paraphrased) that the petitioner, being the real brother of the deceased, is vitally interested in a fair trial so that the deceased and his family receive justice. Furthermore, the petitioner submits that while exercising inherent powers as well as revisional jurisdiction, this Court can examine the

correctness, legality, or propriety of an order passed by the Learned Trial Court. Since such powers can be exercised *sua sponte* by this Hon'ble Court, there exists no bar on the petitioner from assailing the impugned order passed by the Learned Trial Judge by invoking the attention of this Hon'ble Court that an occasion has arisen to exercise inherent and/or revisional powers.

3. Reliance is placed upon the jurisprudential principle that the concept of strict *locus standi* is largely alien to criminal jurisprudence, and that a "victim" possesses wide and meaningful participatory rights from the stage of investigation through the culmination of proceedings, including appeals and revisions.

4. It is further submitted that the petitioner, being the full-blooded brother of the deceased, constitutes a victim and is vitally interested in the outcome of a fair trial. It is pointed out that the trial itself was transferred pursuant to a Transfer application filed at the instance of the petitioner. In WPA 6315 of 2021, the petitioner was transposed as a writ petitioner by the Division Bench, which recognition of his *locus* and continuing participatory rights was expressly upheld. Consequently, the petitioner has been actively involved at every stage of the proceedings.

5. Reliance is also placed on the order dated 17.03.2023 passed by the Hon'ble Supreme Court in Transfer Petition (Criminal) No. 409 of 2021, wherein the issue of the petitioner's *locus standi* was substantially considered by the Hon'ble Supreme Court, and the challenge thereto was not sustained.

6. Upon consideration of the submissions advanced on behalf of the petitioner, the judicial pronouncements cited, and the factual matrix of the present case, the issue of the *locus standi* of the petitioner cannot be revisited *ab initio* and remains finally decided by the Hon'ble Supreme Court. The petitioner, being the full-blooded brother of the deceased, is a victim within

the meaning and scope of Section 2(wa) of the CrPC and is vitally interested in ensuring a fair and proper trial. Hence, this Court finds that there is no impediment to the maintainability of the instant revisional application at the instance of Afzal Ali Sha.

7. In the present revisional application, the petitioner assails the order dated 27.07.2023 passed by the Learned Chief Judge, City Sessions Court, Calcutta. This order rejected the application filed by the Learned Special Public Prosecutor seeking the discharge of the prosecution witness, namely Samed Sha (CSW-25), and directed the prosecution to produce and examine the said witness. The Learned Trial Judge, in rejecting the said application, proceeded on the premise that there was no scope for the Learned Public Prosecutor to examine or assess the credibility of a witness prior to adducing evidence before the Court.

8. It has been contended by the petitioner as well as the Learned Special Public Prosecutor that the conduct of the prosecution is primarily within the domain and discretion of the Public Prosecutor, who, as an officer of the Court, is entrusted with the responsibility of presenting the case in a fair and legal manner. The Public Prosecutor is not bound to examine each and every witness cited in the charge-sheet and is competent to decide, based on prudence and a bona fide assessment, which witnesses are necessary to sustain the prosecution case.

9. In this regard, reliance is placed on the decision of a four-judge Bench of the Hon'ble Supreme Court in **Masalti Vs. State of Uttar Pradesh** reported in **1964 (8) SCR 133**. In the aforesaid judgment, the Hon'ble Apex Court categorically held that where the Public Prosecutor, in good faith (*bona fide*), believes that certain witnesses have been won over or are otherwise unreliable, it would be unreasonable to compel the prosecution to examine such witnesses. The Court further observed that no rigid or inflexible rule can be

laid down regarding the examination of all listed witnesses; and if a witness is withheld by the prosecution, it remains open for the defence to examine such witness, if so advised. This principle has been reiterated in subsequent judgments, wherein the Hon'ble Supreme Court upheld the discretion of the prosecution in deciding the necessity of examining particular witnesses.

10. It has been specifically contended by the Learned Special Public Prosecutor that the said witness, Samed Sha, has allegedly been used by the accused persons to threaten and influence other witnesses, and a written complaint in this regard has already been lodged before the Superintendent of Police, Purba Medinipur (Annexed at Page No. 148 of CRR 2880 of 2023). In such circumstances, the apprehension of the prosecution that the said witness may not support the case or may have been compromised cannot be deemed unfounded or arbitrary.

11. Learned counsel appearing for the respondent No.2 in CRR 2880 of 2023 submits that if the contention of petitioner is adopted it will give unbridled power upon the Public Prosecutor dealing in criminal cases. The fate of a given case will depend upon the mercy of the Public Prosecutor as to whom he want to examine and as to whom he want to discharge. By giving such comment the Public Prosecutor will also influence the judge sitting over the trial. The learned Court sitting over the trial is not a mere spectator. Power under Section 311 of the Code of Criminal Procedure, 1973 is applicable in respect of the witness who has not been summoned or though summoned but is already examined and his re-examination is required. Here in the given case, the PW-25 is a summoned witness and he has not been examined yet. It is submitted that once a witness is summoned and he appears before the Court then it is the learned Presiding Judge who will decide the demeanor of the witness. The Public Prosecutor has undoubted duty to lay before the Court all material evidence available to it which is necessary for unfolding the case.

It is also true that he is not bound to examine all witness. He may also withhold the witness for examination before the Court if he comes to know that witness will not support the case or his examination is not necessary.

12. In view of the settled legal position and the factual backdrop, this Court is of the considered opinion that the Learned Trial Judge erred in law in curtailing the discretion of the Public Prosecutor and mechanically directing the examination of the said witness, without appreciating that the prosecution cannot be compelled to examine a witness whom it, in its *bona fide* assessment, considers unnecessary or unreliable.

13. Accordingly, the impugned order dated 27.07.2023 is set aside to the extent it rejects the prayer of the Learned Special Public Prosecutor for the discharge of witness Samed Sha (CSW-25) and directs his examination.

14. The revisional application being CRR 2880 of 2023 along with the application CRAN 1 of 2025 is disposed of.

In Re: CRR 464 of 2025

(Dipak Chakraborty - Vs. – The State of West Bengal & Ors.)

1. In this revisional application, Dipak Chakraborty, an accused in Sessions Case No. 23 of 2023 pending before the Learned Chief Judge, City Sessions Court, Bichar Bhavan, Calcutta, arising out of Panskura Police Station Case No. 495 of 2019, has assailed the order dated 22.01.2025 passed by the Learned Trial Judge. The impugned order allowed the prayer of the Special Public Prosecutor to cross-examine the prosecution witness named Dilip Chakraborty upon him being declared hostile.

2. The case of the petitioner is that during his *examination-in-chief*, the said official witness resiled from his earlier deposition and failed to support the prosecution case. However, at that stage, no prayer was made by the

prosecution to declare the said witness hostile. The petitioner submits that only after the defence had completed the cross-examination was the application seeking permission to declare the witness hostile and to cross-examine him filed by the Learned Special Public Prosecutor, which was subsequently allowed by the Learned Trial Judge in the impugned order.

3. Learned Counsel appearing on behalf of the State submits that the pivotal question arising for consideration in the present revision is whether the prosecution is entitled to seek permission to declare its own witness hostile after the conclusion of cross-examination. The issue arises in connection with S.T. No. 1(03)/2020 (old), corresponding to S.C. No. 23/2023, emanating from Panskura Police Station Case No. 495/2019, presently pending before the Learned Chief Judge, City Sessions Court at Bichar Bhawan, Kolkata. It is contended that Prosecution Witness No. 75, Sri Dilip Chakraborty, who was then serving as an Assistant Sub-Inspector at Panskura Police Station and was associated with the investigation of the FIR against respondent no. 2 and others, materially departed from the version disclosed in his examination-in-chief while deposing during cross-examination. In view of such deviation, the Learned Special Public Prosecutor sought leave of the Court to declare the said witness hostile.

4. It is further contended that the conduct of PW 75, particularly in view of his position as a police officer, has serious ramifications, as his departure from the earlier version substantially undermines the prosecution case and reflects a dereliction of duty, thereby impeding the course of justice. In support of such submission, reliance is placed by the learned Counsel upon Section 154 of the Indian Evidence Act, 1872, which confers a wide and unfettered discretion upon the Court to permit the party calling a witness to put questions in the nature of cross-examination. The said provision, it is

urged, does not circumscribe the stage at which such permission may be granted, nor does it impose any restrictive conditions in that regard.

5. Learned Counsel submits that the discretion vested under Section 154 is to be exercised judiciously yet liberally, having regard to the overall demeanour of the witness, the tenor of his answers, his attitude in the witness box and any inconsistencies with prior statements, with the ultimate objective of eliciting the truth. It is contended that the grant of such permission does not amount to a finding on the veracity of the witness but merely facilitates effective examination. A witness may be treated as adverse only when the Court is satisfied that he is not desirous of speaking the truth or exhibits hostility. It is further urged that to confine the exercise of such power to the stage of examination-in-chief would defeat the very purpose of the provision, as a witness may initially adhere to his prior statements but subsequently introduce contradictions during cross-examination. In such circumstances, the Court is not precluded from invoking Section 154 even at a later stage, including after cross-examination, as the statute does not contemplate any such limitation.

6. It is also contended that no prejudice is caused to the accused by permitting the prosecution to treat a witness as hostile. The mere declaration of hostility does not efface the testimony already recorded as such evidence remains on record and may be relied upon to the extent it is found credible and corroborated. Furthermore, any new facts elicited through such cross-examination can be adequately addressed by affording the defence an opportunity of re-cross-examination. In this regard, reliance is placed upon the judgment of Dahyabhai Chhaganbhai Thakker -vs- State Of Gujarat in AIR 1964 SC 1563, wherein the Hon'ble Supreme Court has held that the power under Section 154 can be exercised at any stage of the trial, including after the conclusion of cross-examination, subject to the safeguard that the

accused is granted an opportunity to re-cross-examine on any fresh matter brought on record. The Court therein expressly rejected the proposition that such power is confined to the stage of examination-in-chief, observing that such a restrictive interpretation would render the provision otiose in situations involving subtle contradictions.

7. Learned Counsel has also sought to distinguish the judgment relied upon by the petitioner in **State of Bihar v. Laloo Prasad** reported in **(2002) 9 SCC 626** by submitting that the said decision does not preclude the grant of permission in a case where the witness, though supporting the prosecution during examination-in-chief, subsequently gives answers favourable to the adverse party during cross-examination. It is contended that the present case squarely falls within such a situation, inasmuch as PW 75 deviated materially from his earlier version during cross-examination. In light of the aforesaid submissions, it is prayed that the present revision be dismissed and that the prosecution be permitted to cross-examine PW 75 by treating him as hostile.

8. Learned counsel appearing on behalf of the respondent no. 2 submits that the petitioner in CRR No. 464 of 2025, who stands as an accused in Sessions Case No. 23 of 2023 pending before the Learned Chief Judge, City Sessions Court at Bichar Bhavan, Calcutta, has assailed the order dated 22.01.2025 passed by the Learned Trial Judge, whereby leave was granted to the Learned Special Public Prosecutor to cross-examine Prosecution Witness No. 75, namely Dilip Chakraborty, upon his being declared hostile. It is contended that the said witness, being a police witness, materially departed from his earlier version during the course of cross-examination, thereby compelling the Learned Public Prosecutor to seek permission to treat him as hostile. The Learned Trial Court, upon due consideration of the substance of the testimony as well as the demeanour and conduct of the witness in the

witness box, allowed such prayer by a reasoned order, reflecting a proper and judicious exercise of discretion.

9. It is further submitted that, in the very same trial, the Hon'ble Supreme Court had occasion to permit the Learned Special Public Prosecutor to cross-examine Prosecution Witness No. 1, being Jahar Sha, even after the conclusion of cross-examination by the defence. It is pointed out that Jahar Sha, the de facto complainant, had initially instituted WPA No. 6315 of 2021 challenging the decision of the State of West Bengal to withdraw the prosecution, but subsequently altered his stance and sought withdrawal of the said writ petition, which would have benefitted the accused persons. At that juncture, the respondent no. 2 intervened by way of an application for transposition, which came to be allowed by the Hon'ble Single Judge by an order dated 28.04.2021. Although the said witness initially supported the prosecution case, he resiled from his earlier version during cross-examination and was not immediately declared hostile. The Hon'ble Supreme Court, in Transfer Petition (Criminal) No. 409 of 2021, permitted the Learned Special Public Prosecutor to declare him hostile and to cross-examine him even at a subsequent stage, taking note of the fact that the de facto complainant had deviated from his examination-in-chief. It is thus contended that the said principle, having been applied in the present trial itself, renders the objection raised by the petitioner wholly hyper-technical and unsustainable.

10. Without prejudice to the aforesaid submissions, it is urged that Section 154 of the Indian Evidence Act, 1972 confers a wide and unfettered discretion upon the Court to permit the party calling a witness to put questions in the nature of cross-examination. The provision does not circumscribe the stage at which such permission may be granted. Its underlying object is to facilitate the discovery of truth in situations where a witness exhibits hostility or departs from prior statements, thereby safeguarding against the miscarriage of

justice. In the present case, the Learned Trial Judge, having observed the demeanour, conduct and tenor of the testimony of the witness, recorded a categorical satisfaction in the impugned order to the effect that the witness was not inclined to depose truthfully and had resiled from his earlier statements and consequently held that the Learned Special Public Prosecutor was entitled to cross-examine Prosecution Witness no. 75 upon being declared hostile. Such satisfaction, being founded upon direct judicial observation, warrants due deference and ought not to be lightly interfered with in exercise of revisional jurisdiction.

11. It is lastly submitted that even the decision relied upon by the petitioner, namely *State of Bihar v. Lalu Prasad* (supra), lends support to the impugned order. In paragraph 6 thereof, the Hon'ble Supreme Court has recognised that the discretion vested in the Court under Section 154 is to be exercised in aid of justice and ordinarily in favour of the Public Prosecutor, particularly where a witness, though supporting the party in examination-in-chief, tilts in favour of the adverse party during cross-examination. Paragraph 7 further clarifies that the prosecution is not bound to accept the testimony of such a witness and may legitimately discredit the same at the stage of final arguments. In the facts of the present case, as is evident from the record, the hostility of the witness emerged during cross-examination. Accordingly, it is contended that the impugned order dated 22.01.2025 does not suffer from any illegality or perversity and any interference therewith would impede the cause of a fair trial. The revisional application is, therefore, liable to be dismissed as devoid of merit.

12. In this regard, reference may be made to Section 154 of the Indian Evidence Act, which provides: "The Court may, in its discretion, permit the person who calls a witness to put any question to him which might be put in cross-examination by the adverse party."

13. A plain reading of the aforesaid provision indicates that the power to permit cross-examination of one's own witness is discretionary in nature and is to be exercised by the Court based on the facts and circumstances of each case.

14. Significantly, Section 154 does not prescribe any rigid stage at which such permission must be sought. The provision is couched in broad terms to enable the Court to elicit the truth and ensure a fair trial. At the same time, such power cannot be exercised arbitrarily and must be founded upon judicial satisfaction that the witness has exhibited an adverse or unreliable disposition.

15. In the present case, it is an admitted position that the witness in question is not an ordinary witness but a police official who, having been cited as a charge-sheeted witness, was expected to support the prosecution case. However, during his *examination-in-chief*, the said witness resiled and failed to support the prosecution version.

16. In such peculiar facts, where a police witness does not support the prosecution case and the Learned Trial Judge, upon observing the witness's demeanour, records that the witness is not desirous of speaking the truth before the Court, the situation assumes a different complexion.

17. The Learned Trial Judge in the impugned order observed as follows: "I have carefully perused the statements made on oath by the Prosecution Witness no. 75 during his examination-in-chief and also during his cross examination and it is very much evident from the cross examination of the Prosecution Witness no.75 that the said witness is one who is not desirous of telling the truth at the instance of the party calling him before the Court. The witness is the eyes and ears of the justice. For this, it is necessary that the witness must come to the Court with full conviction and a sense of duty. Here,

in the instant case, I find that the witness P.W. No.75 has resiled from his earlier statements made by him during his examination-in-chief as he has taken a contrary stand altogether. Therefore, I find some substance in the submission of Learned Special P.P that the Prosecution Witness no. 75 has resiled from his earlier statements during his cross examination. On perusal of the evidence adduced by the Prosecution witness no. 75, during cross examination it is palpably clear to this Court that the witness no. 75 is not speaking the truth after taking oath on the witness dock or in other words has changed sides as a different version of the prosecution story was being portrayed by the said witness during his cross-examination and therefore, Ld. Special PP is entitled to cross-examine the Prosecution witness no. 75 on being declared hostile."

18. This Court is of the considered view that the Learned Trial Judge, being seised of the trial, had the distinct advantage of observing the demeanour and conduct of the witness firsthand. Such advantage is not available to a revisional or appellate court. In that backdrop, the discretion exercised by the Learned Trial Judge under Section 154 of the Evidence Act at the stage of recording evidence deserves to be given credence and need not be interfered with.

19. This Court is also conscious of the peculiar nature of the present case for which various directions have been passed from time to time by this High Court and the Hon'ble Supreme Court as discussed hereinbefore. The object of Section 154 of the Evidence Act is to enable the Court to arrive at the truth and to prevent a miscarriage of justice. A hyper-technical approach, restricting the exercise of such power only to a particular stage of examination, would defeat the very purpose of the provision.

20. In view of the aforesaid discussion, this Court is of the considered opinion that the Learned Trial Judge has exercised the discretion vested under

Section 154 of the Evidence Act judiciously, in accordance with settled principles of law and considering the demeanour of the witness. The impugned order does not suffer from any illegality warranting interference.

21. Accordingly, the revisional application stands dismissed.

In Re: CRR 473 of 2026

(The State of West Bengal - vs.- Anisur Rahaman & Ors.)

1. In this revisional application, the State of West Bengal through the Special Public Prosecutor has assailed the order dated 21.11.2025 as well as the order dated 8.12.2025 passed by the Learned Trial Judge.

2. By an application dated 20.11.2025, the Learned Special Public Prosecutor made a prayer before the Learned Trial Judge to examine and/or re-examine the following witnesses:

- i. Re-examination of CSW 83/PW 68, MD. Jollyul Haque Mallick;
- ii. Examination of PW 75, namely Dilip Chakraborty (all being the subject matter of CRR 464 of 2025);
- iii. Examination of CSW 84, namely Shri Arghya Acharya; CSW 37 Akash Das; CSW 41, namely Shri Koustubh Ratan Das;
- iv. Examination of the Executive Official, namely DM/ADM;
- v. Examination of forensic experts, namely Harendra Nath Singh (FSL) and Dr P R Kumar (FSL);
- vi. Examination of Dipankar Adak, an eye witness;
- vii. Examination of seizure witnesses relating to the recovery of certain articles, namely furniture, cars, bikes, as well as the recall officials who seized those articles;
- viii. Examination of ASI, Goutam Roy.

3. Vide order dated 21.11.2025, the said application was partially allowed by the Learned Trial Judge. The Learned Trial Judge permitted the prosecution to examine Executive Officials (DM/ADM) to prove the order of sanction, one ocular witness namely Dipankar Adak, and ASI Goutam Roy. However, by the selfsame impugned order dated 21.11.2025, the Learned Trial Judge rejected the prayer of the Learned Special Public Prosecutor to re-examine the other witnesses mentioned above.

4. Thereafter, the Learned Special Public Prosecutor filed another application on 03.12.2025 for the examination of CSW 37 (Akash Das), CSW 83 (Md. Jollyul Haque Mallick), CSW 84 (Shri Arghya Acharya), and forensic experts, namely S. Hazra (Senior Scientific Officer, Toxicology), Harendra Nath Singh (Senior Scientific and Reporting Officer), and Dr. P. R. Kumar (Assistant Serologist and Chemical Examiner). By the impugned order dated 08.12.2025, the Learned Trial Judge rejected the said application and closed the prosecution evidence.

5. The Learned Counsel appearing for the respondent no. 9 submits that in C.R.R. No. 473 of 2026, the petitioner being the State of West Bengal, represented by the Learned Special Public Prosecutor, High Court, Calcutta, has assailed the orders dated 21.11.2025 and 08.12.2025 passed by the Learned Trial Judge. It is contended that the Learned Public Prosecutor had earlier preferred an application dated 20.11.2025, praying for examination and/or recall of certain witnesses, including recall of CSW 83/PW 68 being Md. Jollyul Haque Mallick, examination of CSW 84 being Shri Arghya Acharya, CSW 37 being Akash Das and CSW 41 being Shri Koustubh Ratan Das, who were then serving as DM and ADM of Purba Medinipur, examination of forensic experts namely Harendra Nath Singh and Dr. P. R. Kumar who prepared the viscera report, examination of Dipankar Adak, an ocular witness not cited in the charge sheet, examination of seizure witnesses in relation to

recovery of articles such as furniture, cars and motorcycles along with recall of the concerned officials and examination of ASI Goutam Roy of Panskura Police Station who lodged GDE No. 281 dated 07.10.2019.

6. It is further submitted that by the impugned order dated 21.11.2025, the Learned Trial Judge partly allowed the said application by permitting the prosecution to examine executive officials for the purpose of proving sanction orders, one ocular witness namely Dipankar Adak and ASI Goutam Roy. However, the prayer for re-examination of the remaining witnesses was rejected. Thereafter, the Learned Special Public Prosecutor preferred a further application dated 03.12.2025, seeking examination of CSW 37 Akash Das, CSW 83 Md. Jollyul Haque Mallick, CSW 84 Shri Arghya Acharya and certain forensic experts, namely S. Hazra, Senior Scientific Officer (Toxicology), Harendra Nath Singh, Senior Scientific and Reporting Officer and Dr. P. R. Kumar, Assistant Serologist and Chemical Examiner. By the impugned order dated 08.12.2025, the Learned Trial Judge rejected the said application and proceeded to close the prosecution evidence. Both the aforesaid orders are under challenge before this Hon'ble Court in the present revisional application.

7. The learned counsel for the respondent no. 9 further submits that the peculiar and exceptional facts of the present case warrant a liberal and purposive exercise of powers under Section 311 of the Code of Criminal Procedure. It is urged that the case stands on an extraordinary footing, inasmuch as the trial has been beset with serious impediments, including repeated instances of witnesses, particularly police witnesses, turning hostile, thereby undermining the fairness and completeness of the trial process.

8. It is further submitted that the factual background of the case, which is germane for adjudication of the present issue, discloses that on 08.01.2019, Panskura Police Station Case No. 495 of 2019 was registered under Sections

302/120B of the Indian Penal Code against several accused persons on the complaint of one Jahar Sha. Upon completion of investigation, a charge sheet was submitted in the year 2020 under Sections 302/120B of the Indian Penal Code and Sections 25/27 of the Arms Act against ten accused persons. During the pendency of the trial and while evidence was being recorded, the petitioner issued a notification under Section 321 of the Code of Criminal Procedure seeking withdrawal of the prosecution, which was assailed by the de facto complainant before this Hon'ble Court in WPA 6315 of 2021. During the pendency of the writ proceedings, the Learned Trial Judge allowed the application under Section 321 CrPC and by judgment and order dated 02.03.2021, acquitted the accused persons on the ground of withdrawal of prosecution.

9. It is further submitted that on the self-same day, this Hon'ble Court, during the pendency of WPA 6315 of 2021, set aside the notification issued under Section 321 CrPC. In an intra-court appeal preferred against the said order, the Hon'ble Division Bench, by order dated 13.04.2021, remanded the matter to the Learned Single Judge on a technical ground, namely, that one of the accused had not been afforded an opportunity of hearing, while directing that the status quo prevailing at the time of the order of the Learned Single Judge would continue. Upon remand, during the hearing of the writ petition, the de facto complainant sought to withdraw the proceedings on the ground of alleged pressure, whereupon Afjal Ali Sha @ Abjal Shaukat Sha, being the brother of the deceased and the substituted opposite party no. 9 herein, applied for transposition as a writ petitioner to continue the proceedings. By order dated 28.04.2021, the Learned Single Judge allowed such prayer, which was subsequently upheld by the Hon'ble Division Bench in MAT 550 of 2021.

10. Thus, it is submitted that the case involves a chequered and complex procedural history and in such circumstances, a restrictive approach to the

exercise of powers under Section 311 CrPC would defeat the ends of justice. It is therefore, contended that in order to ensure a fair and complete adjudication, the prosecution ought to be afforded an opportunity to examine and/or recall the necessary witnesses, whose evidence is essential for a just decision of the case.

11. The Learned Counsel appearing on behalf of respondent no. 1 contends that the present revision petition constitutes the final link in a protracted chain of dilatory tactics and as such, deserves to be dismissed outright with exemplary costs. Such contention is premised on multiple substantial grounds.

12. At the outset, it is submitted by the Counsel that the jurisdiction under Section 311 of the Code of Criminal Procedure is an extraordinary one and cannot be invoked at the mere instance of the prosecution in the absence of sufficient, much less cogent, reasons. The applications dated 20.11.2025 and 03.12.2025, it is submitted, are conspicuously lacking in substantive justification and are couched in vague terms, particularly evident from paragraph 2 of the application dated 20.11.2025. It is further submitted that the invocation of Section 311 mandates the existence of compelling material and a demonstrably justifiable case, as enunciated in *Swapan Kumar Chatterjee v. Central Bureau of Investigation* reported in (2019) 14 SCC 328. The opacity surrounding the said applications, according to the respondent, betrays an ulterior design to frustrate the strict timelines for trial consistently directed by superior courts. In this regard, reliance is placed by the Learned Counsel upon a series of judicial directions, including orders passed by the Hon'ble High Court at Calcutta in CRR 1395 of 2020 (*Jahar Sha v. State of West Bengal*) dated 06.10.2020, mandating expeditious completion of trial with a structured calendar for examination of witnesses, the Hon'ble Supreme Court in TP (CrI.) 409/2021 (*Afjal Ali Sha @ Abjal Shaukat Sha v. State of*

West Bengal & Ors.) dated 17.03.2023, requiring weekly sittings and conclusion within six months, the order of this Court in CRM (DB) 3916 of 2023 (Sk. Md. Anisur Rahaman) dated 29.01.2024, directing day-to-day trial with strict limitations on adjournments and timelines for witness examination, the Hon'ble Supreme Court's order in Criminal Appeal No. 43 of 2025 dated 14.10.2025, stipulating a minimum of two hours per day for witness examination and the subsequent order in MA 44979 of 2025 (Sk. Md. Anisur Rahaman v. State of West Bengal & Anr.) dated 26.11.2025, permitting alternate-day hearings to ensure expeditious conclusion of the trial.

13. It is further contended that, in the absence of any discernible rationale, the learned Chief Judge rightly declined, in part, the prayer of the learned Special Public Prosecutor by order dated 21.11.2025. It is pointed out that the portion of the said order permitting examination of certain witnesses has not been assailed and has attained finality, such acceptance, however, cannot be construed as lending validity to the impugned refusal.

14. Further, it is submitted that the order dated 08.12.2025 clearly reveals the lack of substance in the subsequent application dated 03.12.2025, which, in effect, sought a reconsideration of the earlier order. The addition of three public servants, namely S. Hazra, H.N. Singh and Dr. P.R. Kumar, is characterised as a superficial attempt to circumvent the bar against repetitive applications, which is impermissible in law, as held in *G. Someshwara Rao v. Samineni Nageswara Rao* reported in (2009) 14 SCC 677. It is further contended that, being forensic experts, their reports are admissible per se under Sections 293 and 294 of the CrPC and in the absence of any request from the defence for their cross-examination, their summoning is wholly unwarranted, rendering the application devoid of merit.

15. It is also argued that the order dated 21.11.2025 was not immediately challenged, thereby contributing to further delay in the proceedings.

Additionally, the present revision petition, which seeks to assail two separate orders in a single proceeding, is, on that ground alone, not maintainable in law.

16. Lastly, it is submitted that, when examined through the prism of Section 230 of the CrPC, the summoning of witnesses lies within the judicial discretion of the trial court and is to be exercised only upon the existence of valid and sufficient grounds and not at the mere dictate of the prosecution. In the present case, the absence of any such grounds fully justified the refusal by the learned Chief Judge. In view of the aforesaid circumstances, coupled with the repeated directions issued by the Hon'ble Supreme Court for expeditious completion of trial, it is contended that the present revision petition is liable to be dismissed, along with imposition of exemplary costs.

17. The submissions advanced on behalf of all parties have been heard.

18. It appears from the applications filed by the Learned Special Public Prosecutor that the subsequent application dated 03.12.2025 was, in substance, a reiteration of the earlier application dated 20.11.2025 insofar as it sought the examination and/or re-examination of witnesses in respect of whom the prayer had already been rejected by the Learned Trial Judge by order dated 21.11.2025, save and except the inclusion of one additional witness, namely S. Hazra, who was not named in the earlier application.

19. In such circumstances, there was no scope for the Learned Trial Judge to revisit the very same prayers which had already been partially rejected by the earlier order dated 21.11.2025. The appropriate course available to the Learned Special Public Prosecutor was to assail the said earlier order in accordance with law, rather than to file a fresh application seeking substantially identical reliefs.

20. It further appears from the impugned orders that the Learned Trial Judge was, to some extent, acting under a sense of urgency to conclude the trial, in view of the earlier directions passed by the Hon'ble Supreme Court and a Co-ordinate Bench of this Court requiring the day-to-day examination of witnesses. However, such urgency appears to have led to certain observations being made which were characterized as imprudent.

21. Attention of this Court has also been drawn to the order dated 26.11.2025 of the Hon'ble Supreme Court in Miscellaneous Application (Diary No. 44979 of 2025) with Interlocutory Application Nos. 197604 of 2025 and 227763 of 2023 in connection with Criminal Appeal No. 43 of 2025. Although the issue before the Hon'ble Supreme Court pertained to the cancellation of bail and the modification of bail conditions, the Hon'ble Supreme Court passed a detailed order touching various aspects of the present case and the manner in which the trial was being conducted.

22. Even though the order dated 21.11.2025 was not directly under challenge before the Hon'ble Supreme Court, the remarks made by the Learned Trial Judge did not go unnoticed, and the Hon'ble Supreme Court was pleased to observe that such remarks were uncalled for and accordingly set aside the portions containing such observations. Liberty was also granted to the parties to assail the said order, if so advised.

23. It is also pertinent to note that the Hon'ble Supreme Court, in Paragraph 64 of the said order dated 26.11.2025, observed as follows: "The Sessions Court ought to have been alive to the situation that the predecessor in office of the Special Public Prosecutor was tardy, lethargic, indolent and unenthusiastic for which the current initiative of the Special Public Prosecutor was necessary for a fair, effective and meaningful trial. The Sessions Court ought not to forget the status of a prosecutor, who has been appointed pursuant to an order of this Court. Reference to legal maxims could be

insightful, if the context so requires, but overusing them might distract from the main issue, coming across as ostentatious rather than substantive. We conclude by observing that the Special Public Prosecutor has been unfairly criticized by the Sessions Court in its hurried attempt to conclude the trial without, however, realising the seriousness and magnitude of the situation. However, while viewing this as a one-off aberration on the part of the presiding officer of the Sessions Court, we hope that it is not repeated."

24. The Hon'ble Supreme Court further clarified that the Learned Trial Court ought to conclude the trial without being overly concerned about earlier timelines.

25. While deciding the present revisional application, this Court has also had occasion to peruse the orders passed by the Co-ordinate Bench of this Court in WPA 6315 of 2021 and WPA No. 15893 of 2023, as well as the order passed by the Hon'ble Supreme Court in Transfer Petition (Criminal) No. 409 of 2021 and other orders passed from time to time in connection with the present case.

26. It is undisputed that the facts of the present case are of a peculiar nature, inasmuch as the State authorities had earlier sought the withdrawal of prosecution in a murder case after the commencement of the trial; several witnesses who did not support the prosecution case were not being declared hostile; there are allegations that witnesses were abducted during the trial; and even official/police witnesses failed to support the prosecution case on the witness dock. Such circumstances indicate that the trial of the instant case has faced serious challenges, hurdles, and complexities.

27. The trial of the instant case was subsequently transferred to Calcutta, a Special Public Prosecutor was appointed pursuant to an order of the Hon'ble

Supreme Court, and this Court was directed to monitor and supervise the progress of the trial.

28. The Learned Special Public Prosecutor has sought to examine, *inter alia*, CSW 37 (Akash Das), who had taken photographs and videographs relating to the crime; CSW 41 (Shri Koustubh Ratan Das), an expert associated with the CID and involved in the preparation of portrait parades and forensic identification; CSW 84 (Shri Arghya Acharya), a Learned Magistrate; as well as forensic experts including S. Hazra (Senior Scientific Officer, Toxicology), Harendra Nath Singh (Senior Scientific and Reporting Officer), and Dr. P. R. Kumar (Assistant Serologist and Chemical Examiner), who has given allegedly illegible reports. CSW 83, Md. Jollyul Haque Mallick, is a witness sought to be recalled in relation to a Test Identification Parade (TIP).

29. The examination of PW 75, namely Dilip Chakraborty, which has already been the subject matter of CRR 464 of 2025 and has been decided hereinbefore, does not require any further dealing in the present context.

30. Having regard to the nature of the witnesses sought to be examined, this Court finds that the said witnesses are, to a large extent, formal and official witnesses, whose examination is necessary for the proper adjudication of the case. It cannot be said that their examination is intended to fill up lacunae in the prosecution case. On the contrary, their evidence appears to be relevant for a just and complete appreciation of the issues involved. Needless to mention that the defence shall have full and adequate opportunity to cross-examine the said witnesses, and therefore, no prejudice will be caused to the defence.

31. Considering the peculiar facts and circumstances of the present case and bearing in mind that the trial is required to be conducted in a fair, effective, and meaningful manner, this Court is of the view that the Learned

Special Public Prosecutor ought to be afforded sufficient opportunity to lead appropriate evidence. This Court therefore directs as follows:

A. The Learned Trial Court is directed to permit the prosecution to examine and/or re-examine the following witnesses:

- I. CSW 37 – Akash Das;
- II. CSW 83/PW 68 – Md. Jollyul Haque Mallick (for the purpose of re-examination/recall);
- III. CSW 84 – Shri Arghya Acharya;
- IV. CSW 41 – Shri Koustubh Ratan Das;
- V. S. Hazra – Senior Scientific Officer (Toxicology);
- VI. Harendra Nath Singh – Senior Scientific & Reporting Officer (FSL);
- VII. Dr. P. R. Kumar – Assistant Serologist and Chemical Examiner;
- VIII. The defence shall be afforded full and adequate opportunity to cross-examine all the aforesaid witnesses;

32. The Learned Trial Court shall thereafter proceed with the trial expeditiously and in accordance with law, without being unduly influenced by any earlier timelines.

33. With the aforesaid observations, CRR 473 of 2026 is disposed of.

34. Urgent Photostat certified copies of this judgment, if applied for, be supplied to the parties upon fulfilment of requisite formalities.

(RAJARSHI BHARADWAJ, J)

Kolkata
15.05.2026
PA (BS)