Form J(2)

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:
THE HON'BLE JUSTICE AJAY KUMAR GUPTA

CRR 2965 of 2024
With
IA No.: CRAN/5/2026

KAILASH CHANDRA AGARWAL
VS.
The STATE OF WEST BENGAL & ORS.

For the Petitioner	**:**	**Mr. S. A. Moqued, Adv.,**
		Mr. Numan Shah, Adv.
For the State	**:**	**Mr. Kallol Mondal, Ld. P.P.,**
		Ms. Samira Gerwal, Adv.,
		Ms. Ananya Chakraborty, Adv.
HEARD ON	**:**	**05.10.2026**
JUDGMENT ON	**:**	**05.10.2026**
UPLOADED ON	**:**	**06.10.2026**

(In Court)

AJAY KUMAR GUPTA, J.:-

1. The instant revisional application has been filed by the petitioner being the de facto complainant under Article 227 of the Constitution of India challenging the order dated 2nd September, 2023 passed by the learned 16th Court of Metropolitan Magistrate, Calcutta in GR Case No. 2979/2011 (State of West Bengal –Vs.- Satya Narayan Agarwal & Ors.) arising out of Muchipara Police Station FIR No. 450 dated 20.08.2011 under Sections 341/506(ii)/114 of the Indian Penal Code.
2. By the said impugned order, the learned Metropolitan Magistrate allowed an application filed under Section 311 of the Code of Criminal Procedure by recalling the witness, i.e. P.W. 3, for further cross-examination on the part of the accused at the stage of recording statement under section 313 of the Code of Criminal Procedure.
3. Fact, in a nutshell, is that on 15.08.2011 at about 9:00 am, the FIR-named accused persons, being aided and abetted by each other, wrongfully restrained the complainant/Petitioner, and also threatened him with dire consequences over the issue of possession of a shop and godown room situated at 128, A.J.C. Bose Road, P.S.- Muchipara, Kolkata – 700 014.
4. After culmination of investigation, a charge-sheet was submitted against six accused persons under Sections 341/506(ii)/114 of the Indian Penal Code.

5. Learned counsel for the de facto complainant submits that at the stage of recording the statement of the accused persons under Section 313 of the Code of Criminal Procedure, they filed an application for recalling the de facto complainant for cross-examination for contradiction, even though six prosecution witnesses have been examined and cross-examined and discharged. However, upon hearing the parties, and ignoring the fact that the cross-examination of all prosecution witnesses had already been completed five years ago and that the defence conducted a lengthy cross-examination, the learned Trial Court, whimsically and mechanically, allowed the prayer for recalling of the de facto complainant for cross-examination without assigning reasons. Therefore, the order impugned is liable to be set aside, and the Trial Court may be directed to proceed with the case and decide the same in accordance with law; otherwise, the petitioner would suffer injury.

6. None appears on behalf of the opposite party no.2 on call. No accommodation has either been sought for.

7. The learned Counsel appearing on behalf of the State submits that the defence has cross-examined P.W. 3/the present Petitioner extensively. There was no necessity for further cross-examination for contradiction after examination. Moreover, cross-examination of the witnesses after five years at the stage of recording statement under Section 313 of the Code of Criminal Procedure is unreasonable. The purpose of filing of

such an application is only to delay the proceedings. The case is pending since 2011. The trial court, without considering the actual facts, whimsically and capriciously allowed the prayer without assigning any valid or cogent grounds. Therefore, the order impugned is liable to be set aside.

8. Having heard the submissions of the learned counsels for the respective parties and on perusal of the impugned order, this Court would like to quote the provision of Section 311 of the CrPC for fair and effective disposal of this application.

9. Section 311 of the Cr.P.C. reads as follows:

> *"**311. Power to summon material witness, or examine person present.**—Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case."*

10. Upon bare perusal of the aforesaid provision, this court finds the section specifically states the discretionary power of the criminal court to summon any material witness, examine any persons present or recall and/or re-examine an already examined witness at any stage of an inquiry, trial, or proceeding, as long as it is allowed to reach a just decision of the case. The paramount consideration ought to be to

discover the truth, prevent a miscarriage of justice, and ensure a fair trial, but that should not be allowed to be used merely to plug loopholes or fill up the lacunae.

11. Therefore, this Court is of the view that the Trial Court ignored the earlier examination and cross-examination of P.W. 3, from which it appears that extensive cross-examination was done by the defence on the basis of the examination-in-chief, and it was done five years ago.

12. Apart from that, this court does not find sufficient grounds set forth by the Opposite Party No. 2 in his application which would justify the cross-examination of P.W. 3/the present Petitioner. He prays simply for cross-examination for contradiction. Such prayer for cross-examination of P.W.3, who had been examined long back, i.e. five years ago, without valid and/or reasonable grounds is unsustainable in law. It manifestly appears that the accused person has filed the application only to drag the case and/or for the purpose of filling up the lacunae. It ought not to be allowed by the Trial Court. The Trial Court has passed the order mechanically without applying its judicial mind. Accordingly, the same is liable to be set aside.

13. The impugned order dated 2nd September, 2023 passed by the Trial Court is hereby set aside.

14. Accordingly, **CRR No.2965 of 2024** is, thus, **allowed**.

15. Consequently, **CRAN No. 5 of 2026** is also disposed of.

16. Interim order, if any, stands vacated

17. The Trial Court is directed to examine the accused person under Section 313 of the Code of Criminal Procedure and allow the accused person to adduce defence witnesses on their behalf, if necessary. The trial court is further directed to expedite the trial without granting unnecessary adjournment to the parties and logically conclude the proceedings independently and in accordance with law without being influenced by the observations of this Court.
18. Let a copy of this order be communicated to the learned Trial Court for information and necessary steps.
19. All parties are to act on the server copy of this judgment duly downloaded from the official *website* of the Calcutta High Court.
20. Urgent xerox certified copy, if applied for by the parties, same shall be supplied upon compliance of the necessary formalities.

(**AJAY KUMAR GUPTA, J.)**

Srimanta, A.R.(Ct.)