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CRR 5228 of 2025

**Basu Deb @ Basudeb Deb @ Basa @
Prasanta Deb @ Dey**

Vs.

The State of West Bengal & Anr.

Mr. Soumya Nag	
Mr. Soumya Basu Roy Chowdhury	
Ms. Namrata Chatterjee	...for the Petitioner
Mr. Navanil De	
Mr. Srinjan Ghosh	...for the O.P. no. 2
Ms. Rituparna Ghosh	
Ms. Diksha Ghosh	...for the State

The petitioner herein is aggrieved with the order dated 22.5.2025 by which, the court below rejected the petitioner's prayer to cross examine PW-12 and further directed that part of the cross-examination recorded inadvertently on that day shall be expunged.

On perusal of the order dated 15.1.2025, it appears that the prosecution sought for an accommodation to bring the PW 12 for cross-examination by the accused persons. However, the court below refused to grant further accommodation and the cross-examination of PW 12 was closed. Thereafter, on 22.5.2025, learned court below passed the aforesaid order for expunging evidence.

Having heard learned counsel for the petitioner and both the opposite parties, it appears to me that the order passed by the court below in expunging the cross-examination recorded on 22.5.2025 is unheard of. In the Code of Criminal Procedure or under the evidence Act there is no provision for

expunging the evidence recorded by way of examination or cross-examination of any witness, unless the appellate court asked the Trial court to make de novo trial. Therefore, the order impugned is palpably perverse and not sustainable in the eye of law. It further appears that on 15.1.2025, the prosecution sought for an accommodation as they failed to bring the witness on that day but for no fault on the part of the accused person, the Trial court closed the evidence, which is also an arbitrary order and has definitely caused prejudice to the petitioners.

In such view of the matter, the orders dated 15.1.2025 and 22.5.2025, which pertain to closure of cross-examination of PW 12 by the petitioners and also which pertain to expunge the evidence of PW 12 recorded on 22.5.2025, are hereby set aside.

The prosecution is directed to produce the witness namely PW 12 positively before the court below on the next date i.e. on 23.2.2026 or within a week thereafter and the petitioner will conclude their cross-examination on that day and thereafter the court below will proceed in accordance with law and will make his best endeavour to conclude the trial preferably within a period of two months thereafter.

CRR 5228 of 2025 is accordingly disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Dr. Ajoy Kumar Mukherjee, J.)