

**IN THE COURT OF SPECIAL DESIGNATED JUDGE FOR
CONDUCTING THE SPEEDY TRIAL OF SERIAL BOMB BLAST
CASES, AT AHMEDABAD.**

SESSIONS CASE NO.38 OF 2009 AND OTHERS

- Shri H.M. Dhruva : L.Sp.P.P.,for the State
- Shri S.R. Brahmhatt
- Shri M.R. Amin : L.A.Sp.P.P.,for the State
- Shri A.M. Patel
- Shri R.K. Shah
- Shri D.D. Pathan
- Shri M.M. Shaikh
- Shri S. Vatsa
- Shri L.R. Pathan : L.A. for the Accused
- Shri A.N. Alvi
- Shri J.M. Pathan
- Shri K.G. Shaikh

:: ORDER BELOW EXH.:3049 ::

1. Read the application along with Section 291(A), 231, 231(2), 293. Perused record and proceedings of Sessions Case No.38/2009. Also read the citation placed by the prosecution side which is **2003(1) Crimes Calcutta High Court Page 625** in the case of **Lalu Alam Vs. State of West Bengal Para 16 to 20**. Heard.
2. The accused have moved the present application under Section 231(2) read with Section 291(A) of Cr.P.C., as per the application, as prayed for accordingly.

3. The learned Advocates of accused jointly and severally read Section 291(A), 293, 231(2) of Cr.P.C., in detail and descriptive form and also explained the facts of the application with the basic object. Mr. R.K. Shah learned Advocate for the accused further submitted before the Court that the evidence of Executive Magistrate is construed to be a corroborative evidence and the evidence of the panchas is substantiative evidence and therefore the evidence of Executive Magistrate can be examined at a later stage of the case and this evidence can be read as an evidence of Investigation Officer and if at this juncture the evidence of Executive Magistrate for the identification parade shall be recorded then by the cross-examination the defense of the accused shall be exposed and in these circumstances the application deserves to be allowed as prayed for. Learned Advocate Mr. Shah further submitted that the evidence which shall be produced by the Executive Magistrate is not comparable under Section 293 of Cr.P.C., as scientific reports and in these circumstances Section 231(2) of Cr.P.C., comes into play and application deserves to be allowed. The learned Advocates prayed to allow the application as prayed for.
4. Per-contra learned Special P.P., Mr. H.M. Dhruva submitted before the Court that the application moved by the accused side is

falsity, baseless and meritless as mere apprehension of defense exposed cannot be a ground to allow the present application, it is because the documents which are placed by the Executive Magistrate before the Court cannot be straightway serve the purpose under Section 3 of the Evidence Act for the prosecution side and looking to the nature of the case and the evidential value of the present witness the Executive Magistrate examination of the witness is necessary and the accused did not admit the documentary evidences and cross-examination shall be held. In these circumstances the application deserves to be dismissed with cost. Leaned Special P.P., Mr. Dhruva placed citation of **2003(1) Crimes Calcutta High Court Page 625** in the case of **Lalu Alam Vs. State of West Bengal Para 16 to 20** and finally prayed to dismiss the application with cost.

5. Considering the submission of both the parties the Court feels that Section 231(2), 291(A) and Section 293 of Cr.P.C., lies on the discretionary powers of the Court and by the amendment in Section 291(A) the object of the legislature is to relax the evidential procedure concerned to such witness. Moreover, Section 291(A), 291(2) and Section 231(2). The Sections are meant for the smooth - speedy trial proceedings to save the time of the

Court and looking to the nature of the trial and the charge in the case on hand, the Court feels that the present witness of the prosecution Executive Magistrate is required to be examined as it is the settled principle of law that it is the choice of the prosecution for the Public Prosecutor that to whom or which witness the Public Prosecutor or the prosecution will examine as witness and in which order. The accused or defense has no right at all to interfere in the manner of the examination of the witness as well as order. The question of application of provisions of Section 231(2) does not arise at all until the prosecution starts the examination of its witness. Mere asking to defer the cross-examination cannot be a ground for allowing the application as prayed for in the present case on hand, taking into consideration of the nature of the trial and the charge.

6. There is no right to accused to reserve the cross-examination generally, or according to the procedure examination and the cross-examination of the witnesses are a continuous process. Section 231(2) vests with the judge discretion to permit for the sufficient reason, either (1) cross-examination of witness to be deferred until any other witness or witnesses have been examined or (2) recall any prosecution witness for further

examination. The defense has no right to claim to postponement or deferring cross-examination of witness until any other witness or witnesses have been examined. But the discretion to defer lies with the Court.

7. Such legal view is also expressed in citation **2003(1) Crimes Calcutta High Court Page 625** in the case of **Lalu Alam Vs. State of West Bengal Para 16 to 20.**

8. In construing the true sense of words of Section 231(2) of Cr.P.C., the words permit the cross-examination of any witness to be deferred does not indicate that the legislature of the parliament had ever intention to permit a deferring wholesale cross-examination of prosecution witnesses. The accused has no right for deferring the prosecution witnesses in wholesale way on the belief that otherwise the prosecution may take the chance of filling up the lacuna in its case that may be disclosed during the cross-examination. Such apprehension has no merit in the present case on hand without any cogent evidence or reason. There is no straight jacket formula to defer the witness under Section 231(2) of Cr.P.C., but it depends upon the nature of the case and varies case to case. Moreover here in the case on hand the accused do not admitting the panchnama and the

documentary evidences placed by the prosecution and mere exhibiting the documents under Section 293 of Cr.P.C., shall not serve the purpose of Section 3 of the Evidence Act. So, with these reasons and discussions the Court opines that the application of defense deserves to be dismissed. Hence, the order:

O R D E R

- The defense application at Exh.:3049 is dismissed.
- No order as to cost.
- The case be proceeded.

Pronounced in the open court today
on this 13th day of **August, 2015.**

Date: 13-08-2015

(PANKAJKUMAR CHANDRAKANT RAVAL)
DESIGNATED JUDGE
SPECIAL COURT FOR CONDUCTING SPEEDY
TRIAL OF SERIAL BOMB-BLAST CASES,
AHMEDABAD, GUJARAT.
(CODE NO.: GJ00402)