

ST 31(2)22
SC 93 of 2021
CNR. NO. WBBK090002432021

Order No.11

Date. 02/03/2023

Today is the date fixed for production of the accused person, appearance of the accused persons on court bail and hearing of the petition dated 22-02-2023 filed by the Ld. P.P incharge of this case.

Accused person namely Arun Patra is produced from Bankura District Correctional Home.

Two accused persons namely Tapan Patra and Mithu Patra are present by filing hazira.

Ld. Advocate for the accused persons is present.

Learned public prosecutor Incharge of this case has submitted that in this case PW-1 has been examined and discharged after cross examination on 24.11.2022 but inadvertently said witness has not been examined on some material points , he prays for recalling of PW-1 , so that prosecution can examine the said witness on the material points like cause of death of victim, whereabouts of victim prior to death , condition of victim and other relevant points. He has further submitted that for proper adjudication of this case further examination of said witness is necessary .

Learned advocate for the accused persons has vehemently opposed the prayer of the learned public prosecutor Incharge of this case for recalling PW-1 and submitted that when PW-1 has been examined , cross examined and discharged then prosecution has no right to examine such witness again as that will be amount to filling up lacuna of prosecution. He prays for rejecting the petition of prosecution.

I have heard learned public prosecutor incharge of this case and learned advocate for the accused persons and perused the records. From the records, it is revealed that PW-1 , the defecto complainant of this case has been examined by prosecution on 24.11.2022 and said witness has been cross examined on behalf of accused persons and said witness was discharged . Whether a prosecution witness , who has been discharged can be recalled required to look into the relevant provision. Under section 311 of Cr.P.C. this court is empowered to summon any witness or recall any witness already examined if evidence of such person appears to be essential to the just decision of the case. From the records it is clear that PW-1 is the defecto complainant of this case, on whose instance criminal law was set into motion . From the records, it is revealed that prosecution has not examined PW-1 on several material points , that is foundational facts in this case , that is fault and negligence on the part of prosecution but for proper adjudication of this case it is necessary to examine PW-1 on those material points, such examination of PW-1 on recall will not prejudice accused persons because accused persons will have opportunity to cross examine such witness .

With above observations petition dated 22.02.2023 filed by prosecution is allowed.

Considering the seriousness of the allegations against the accused person namely Arun Patra, the accused person is remanded to J/C till next date.

Fix 29/04/2023 for production of the accused person, in custody appearance of accused persons on court bail and prosecution evidence.

Let summon be issued to PW-1 .

Dictated and corrected

by me

(J.O. code WB01399)