

Sessions Case No. 319/2011

Order No.50, dt. 31.05.2022 :-

Accused on court bail is present by filing hazira.

Date is fixed for SDT and for passing order over the petition dtd. 20.05.2022 filed on behalf of the accused u/s-231(2) Cr.P.C praying for deferring the cross-examination of P.W.1 stating inter alia that C.S witness No.1, 2, 10, 12 and 13 being the members of same family they are required to be cross-examined at a time otherwise the defence of the accused will be disclosed.

At the time of hearing Ld Defence Counsel emphatically submitted that the case is sensational one and the aforementioned C.S witnesses are members of the same family and therefore all the witnesses are to be cross-examined one after another deferring their cross-examination otherwise the accused will suffer as his defence will be disclosed.

Ld Public Prosecutor vehemently opposed in such prayer contending inter alia that as a matter of right cross-examination of any single witness cannot be deferred and according to Section-138 of the Indian Evidence Act there is no right to reserve cross-examination and he further contended that after prosecution witnesses are examined, cross-examined by the accused and re-examination if any shall follow immediately in the order as stated in Section-138 of the Indian Evidence Act and he further added that examination and cross-examination are to be a continuous process.

Having heard both sides at length over their contentions and after going through the specific provisions of Section-231(2) Cr.P.C, I am of the view that it is the discretion of the court to permit the accused for sufficient reason to defer the cross-examination of any witness until any other witness or witnesses are examined and that discretion must be exercised by the court judiciously. In a special case where in the circumstances it is found necessary to postpone the cross-examination of a prosecution witness until examination of any other prosecution witnesses but the reason as assigned by the defence to my considered opinion is not a special circumstance where the court is to exercise the discretion and therefore prayer stands rejected.

To 04.07.2022 for further examination in chief of P.W.1.

Issue summons accordingly.

Dictated & Corrected,

Judge Special Court-Cum-
Addl. Sess. Judge, 2nd Court
Cooch Behar

Judge Special Court-Cum-
Addl. Sess. Judge, 2nd Court
Cooch Behar
JO Code No. : WB00634