

In the Court of the Judge, 2nd Special Court, Calcutta
Special Case No.02 of 2024 (Computer Registration No.02 of 2024)
CNR No. WBCS01-000119-2024
Present :- Ananta Kumar Singha Mahapatra (J.O Code-WB00902).

Order No.32
03.03.2025

A-1 Kanchan Kumar is produced from judicial custody through video conference.

A-2 Raj Kumar Roy is present by filing hazira.

Today is fixed for hearing of the application under Section 311 of the CrPC dated 10.02.2025, herein after referred to as the said application, in short, filed by the prosecution.

The learned special public prosecutor is present.

The learned advocate for the accused persons is also present.

Heard both sides in respect of the said application.

The learned public prosecutor submitted that the investigating officer has not seized the cash deposit slips, receipt copy of various complaints submitted at the police station, statement of account and letters submitted at Canara Bank in respect of the witnesses Sunil Kumar Bera, Rajesh Kumar Shaw, Hari Prakash Shaw, Ranjit Bhowmick and Guddu Shaw. That these documents are vital for the prosecution. That the prosecution should be permitted to introduce those documents into evidence for fair trial.

The learned advocate for the accused persons raised strong objection. He submitted that the defence will be prejudiced if those documents are admitted into evidence. That all those documents have been subsequently manufactured to improve the case of the prosecution. He further submitted that the prosecution has not supplied copies of those documents to the accused persons at the stage of supply of copy under section 207 of the CrPC or at the time of framing of charge.

It is settled law that under section 311 of the CrPC, the court may permit any evidence at any stage of the trial or other proceeding, if the same appears to it to be essential to the just decision of the case. At the same time the provisions under section 311 of the CrPC cannot be used for filling up lacunae in the case of the prosecution for the purpose of creating fresh evidence.

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Order No.32(contd..)
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On perusing the documents sought to be introduced into evidence by the prosecution, I find that the same are the cash deposit slips, receipt copy of various complaints submitted at the police station, statement of account and letters submitted at Canara Bank in respect of the charge sheeted witnesses namely, Sunil Kumar Bera, Rajesh Kumar Shaw, Hari Prakash Shaw, Ranjit Bhowmick and Guddu Shaw. On perusing the statements of these witnesses recorded under section 161 of the CrPC, I find that they have stated about paying cash to the accused persons for depositing in their bank account. However, none of the witnesses have stated to the investigating officer about submitting complaints by them at the police station or at Canara Bank. There is no statement of these witnesses that they have obtained any statement of account in respect of their account from Canara Bank.

In such circumstances, I am of the considered opinion that if copy of various complaints submitted at the police station, statement of account and letters submitted at Canara Bank are permitted to be introduced into evidence, the same will amount to creating fresh evidence and the defence will be prejudiced.

However, in respect of the cash deposit slips in respect of those charge sheeted witnesses, I am of the opinion that those documents should be allowed to be tendered into evidence by the prosecution. The investigating officer should have seized those documents and it is settled law that for any defect on the part of the investigating officer, the case of prosecution should not suffer.

Hence, it is ordered, that the application under Section 311 of the CrPC dated 10.02.2025 is allowed in part to the extent as indicated herein before.

To 01.04.2025 for evidence of Charge Sheeted Witness no.8,
02.04.2025 for evidence of Charge Sheeted Witness no.11,
03.04.2025 for evidence of Charge Sheeted Witness no.12,
04.04.2025 for evidence of Charge Sheeted Witness no.13,
07.04.2025 for evidence of Charge Sheeted Witness no.14,

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08.04.2025 for evidence of Charge Sheeted Witness no.15,

10.04.2025 for evidence of Charge Sheeted Witness no.16.

The prosecution is directed to produce the witnesses accordingly.

To date for production of A-1 and appearance of A-2.

Dictated and corrected by me

**Judge, 2nd Special Court,
Calcutta
J.O. Code-WB00902**

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