

Spl Case No.21/11

Reg No.426/14

CNR No. WBCS01-000716-2011

Order No. 107

Order dt. 03.12.25

Today is fixed for order and evidence.

Ld. PP for CBI as well as Ld. Advocate for accused are present.

Four accused persons are facing trial, today A5 Swapan Roy is represented through Ld. Advocate.

A6 Rakesh Kr. Mehrotra is represented u/s 205 CrPC by Id. Advocate Abhijit Bhadra who is absent.

A4 Abdul Rahim Mollah and A7 Subhasish Ghosh are absent and represented by their respective their Id. Advocate u/s 317 Cr.PC.

The petition dated 14.07.25 filed on behalf of A7 namely Subhasish Ghosh is taken up for further hearing and passing order.

Ld. Advocate for the accused/petitioner submits that after the cross examination of PW2 by accused no.4 , the case was fixed for cross examination on behalf of A7 but the Id. Advocate for the accused person was not available and for that reason the cross examination on behalf of A7 was treated as declined.

According to the Id. Advocate for A7 unless an opportunity to cross examine the PW2 is allowed, the accused person will be seriously prejudiced and for that reason the petition u/s 311 CrPC was filed to cross examine the PW2 on the following questions as mentioned in paragraph 6 of the petition:-

- i. Whether the empaneled Advocate has been provided with the original copy for inspection?
- ii. Whether the Learned Advocate has got a scope to compare the photocopy of that Deed with the original prior to handing over the same to his to provide the legal opinion?

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iii. Who has compared the photocopy of the deed with the original?

iv. Whether after obtaining the original title deed from UBI, the opinion about the genuineness of that deed has been sought for?

v. Whether the empaneled Lawyer has ever been advised to obtain certified copy of that Deed?

vi. What is the role of the bank, after obtaining the original deed from the other bank which has been taken over?

vii. Whether the empaneled Lawyer has ever been called for to verify the original title deed with the photocopy and any certificate obtained?

viii. Whether the original title deed has been taken by the bank and what steps has been taken to verify the genuineness?

ix. Whether the subsequent Lawyer has provided the report on the basis of photocopy or after obtaining the certified copy of that deed?

x. Whether at the time of enhancement of loan further opinion or enhancement certificate has been obtained by the bank?

xi. Whether legal Audit of the Mortgaged Deed has been made?

Advocate for the A7 further submits that due to the fault on the part of the accused person, the accused person should not be prejudiced and the court is vested with ample discretionary power u/s 311 of CrPC to allow the Ld. Advocate for the accused person to cross examine the PW2 which was treated as declined for non-appearance of Id. Advocate for the accused person. In support of the contention the Id. advocate for the accused person relied on the decision [2013] 7 S.C.R 420(Rajaram Prasad Yadav Vs State of Bihar and another) and Satbir Singh Vs. State of Hariyana and others.

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On the other hand, Ld. PP for CBI raised objection and submits that the cross examination of PW2 was continuing since 10.06.22 and the accused persons deliberately delayed the cross examination of an official witness who had lodged the written complaint before the CBI. The PW2 is a resident of Orissa and he had attended the court regularly and was available for cross examination on 30.04.25 as well. It is further submitted that Id. Advocate for the accused person present in side the court when the case record was taken up for further cross examination but he left the court to attend other matters and did not turn up before the court at all. The accused person Subhasish Ghosh is also an advocate by profession and both the accused persons and the Id. Advocate for A7 well aware of the legal implication for not willing to cross examine a witness in court during trial.

Id. PP for CBI further submits that the background facts and circumstances of this case does not warrant to allow the petition filed on behalf of A7 and it should be rejected. In support of his contention, Id. Advocate for A7 also relied on the decision of Rajaram Prasad Yadav Vs. State of Bihar and another (2013)14 SCC 461.

Perused the case record and the decision cited by the Id. Advocate for the accused person.

From the case record, it appears that on 30.04.25, the witness Haraprasad Satpathi was present before this court. When the case record was called for further cross examination of PW2, Ld. Advocate for A7 orally submitted before this court that he would cross examine the witness after the conclusion of cross examination by the other accused persons and in the meantime he may be permitted to leave the court for adducing evidence as DW before the Ld. Judicial Magistrate, 8<sup>th</sup> Court, Bankshall Court. I allowed him to leave my court with a stern direction that in case he did not turn up before this court for cross examination, the cross-examination on behalf of A-7 would be treated as declined.

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Ld. Advocate for the A7 left my court around 11:05AM but did not turn up. I directed the witness to wait in my court till 1:30PM and thereafter the order was passed treating the cross examination as declined on behalf of A7 and the next date was fixed for 14.07.25 for further evidence. On 14.07.25 the accused filed the present petition u/s 311 CrPC.

I have gone through the decision cited by the Id. Advocate for the accused person and interestingly both parties relied on the decision of Hon'ble Supreme Court passed in Rajaram Prasad Yadav Vs State of Bihar and another.

In the said decision Hon'ble Apex Court laid down extensive guiding principle for exercising the power u/s 311 of CrPC. The power conferred u/s 311 CrPC is no doubts a discretionary power of the court and it should be exercised judicially and not arbitrarily. It has further clarified that when such evidence is adduced and opportunity of rebuttal is given to the other party. The power u/s 311 CrPC is a power of a court to summon and examine or recall and re-examine such witness to arrive a just decision of this case. The power u/s 311 CrPC is not meant for cross examining a witness when the accused person deliberately abstained from cross examining in open court.

On perusal of the petition, it further appears that the petition u/s 311 CrPC was not even signed by the accused person. It shows the lackadaisical attitude of the accused person in conducting the case. In my view the accused no.7 was given to ample opportunity to cross examine the PW2 but he did not avail those opportunity. Giving further opportunity to the accused person to cross examine the PW2 that too on another date will not only delay the trial of this case but also cause hardship to the other accused persons. It will be purely wastage of valuable time of the court in case the petition filed by A7 is allowed for cross examination of PW2.

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Considering all aspects, the petition filed by the A7 u/s 311 CrPC for cross examining the PW2 is rejected.

To 05.03.26 for evidence.

Issue summons accordingly.

Sd/-  
Judge, 3<sup>rd</sup> Special  
(CBI Designated) Court,  
Bankshall Court, Calcutta