

S T Case No. - 32 (12) 2021
S. C - 39/ 2020
CNR - WBHG01-001116-2020

Order No. 32 Dated 06.09.2024

Today is fixed for appearance of the accused persons and evidence of CSW-14 M.O Dr. Partha Bose.

All the four accused persons named 1) *Debajyoti Patra* ; 2) *Tapas Patra* ; 3) *Chinmoyee Patra* and 4) *Aheli Patra* on CB are present and has filed hazirah through Ld. Advocate.

Ld. Addl. PP, Hooghly is also present representing the State Prosecution.

CSW-14 M.O Dr. Partha Bose is present and he is examined and cross-examined as PW-12 and discharged. The P.M report dated 24.09.2019 and his signature on the same have been marked as Exhibit – P-7 and Exhibit – P-7/1 respectively.

No other witness is present today.

At this stage, Ld. Addl. PP, Hooghly makes a prayer for disposal of the petition dated 24.05.2024 that was filed on behalf of the State for re-call of 10 witnesses by invoking the provisions of Section 311 of Cr.P.C.

Copy of the petition was duly served upon the Ld. Advocate for the accused who raised objection.

The matter was heard at length in presence of both sides.

Upon perusal of the petition filed under section 311 of Cr.P.C, it appears that the prosecution had intended to examine the following 10 witnesses as the I.O had failed to cite them as witnesses in the charge sheet : 1) L/C 07 *Monika Chakraborty* of Chinsurah Woman P.S.; 2) L/C 311 *Kasturi Dubey* of Chinsurah Woman P.S.; 3) Cr. 409 *Soumen Adhikary* of Chinsurah Woman P.S.; 4) C.1569 *Anil Das* of Chinsurah P.S.; 5) S.I.P *Bikash*, Chinsurah P.S, 6) C337 *Deb Kumar Saha* of Chinsurah P.S.; 7) S.I *Anand Jasiwal*, 8) Cr 216 *Dhananjay Mondal*, Chinsurah Woman P.S, 9) L/C 117 *Banasree Chowdhury* and 10) Executive Magistrate who held the inquest.

The petition further reveals that witness no. 1, 2 and 3 are police personnel who were witnesses to the seizure list dated 25.09.2019 where duplicate copy receipt book of Hindu Marriage Registrar and four mobile phones were seized. The witness no. 4 in the above schedule is also the police personnel who had produced the deceased to the Chinsurah hospital for post-mortem. Witness nos. 5 and 6 were also the police personnel who were witnesses to the seizure of the wearing apparels of the deceased in respect of the UD case. The witness no. 7 as mentioned above had already been examined as PW-11. The witness no. 8 and witness no. 9 are also the police officers who were the seizure witnesses when the I.O of this case had seized the wearing apparels of the deceased. Lastly, witness no. 10 is the Executive Magistrate who had held the inquest.

Vehemently objecting to such petition,it was the contention of the Ld. Defence Counsel that the prosecution cannot play the role of the investigating officer and by invoking of Section 311 of Cr.P.C the prosecution cannot be permitted to fill up the lacunae in their case.

Seen the materials on record including the evidence of the 12 prosecution witnesses examined till date. The I.O of this case is still to be examined.

It is well settled principle that exercise of power under section 311 of Cr.P.C should be resorted to only with the object of finding out the truth and the same cannot be used to fill up the lacunae in the prosecution case. There is substance in such submissions advanced by the defence. The provisions of section 311 of the Cr.P.C cannot be be utilized in this manner. The seizure of the duplicate copy of the Hindu Marriage register and the mobile phones can very well be proved by the I/O of this case who is still to be examined. In the opinion of this Court, the examination of the other police personnel who were only witnesses to the seizure of the wearing apparels of the deceased by the IO would only delay the disposal of this case where charge was framed for the offences under section 498A/304B/34 of IPC. There is also a direction of the Hon'ble Court for speedy disposal of this

case. So, this Court is of the view that the prosecution be permitted to examine the inquest officer as mentioned in the petition.

Accordingly, the petition u/s 311 of Cr.P.C filed by the State Prosecution dated 24.05.2024 is allowed in part. The petitioner is permitted to examine the inquest officer as mentioned in the petition.

Fixing **01.10.2024** for evidence of the inquest officer and the I.O.

Issue summons accordingly. Prosecution to take steps.

The accused persons to remain on Court bail till such date.

Dictated & corrected by me:

Sd/-

Addl. Dist. & Sessions Judge
(3rd Court), Hooghly
WB00891

Sd/-

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