

ST Case No. - 01 (02) 2020
S C No. -172 / 2019
CNR – WBHG01-005049-2019

Order No.111 dated 05.07.2024

Today is fixed for further hearing of the petition and passing order.

All the seven accused persons namely 1) *Mongal Yadav*, 2) *Baijnath Roy @ Hedek @ Raj*, 3) *Md. Akbar @ Dhole*, 4) *Md. Nasim @ Guddu*, 5) *Md. Manu*, 6) *Md. Sanu and* 7) *Saddam Hossan @ Maa Kasam* have been physically produced from the J.C.

They are represented by their respective Ld. Advocates.

Ld. Public Prosecutor, Hooghly is also present on behalf of the State Prosecution.

Ld. Advocate appearing for the accused Mongal Yadav filed another petition u/s 311 of Cr.P.C with a prayer for re-call of PW-39 on the ground morefully stated therein. He 'Not pressed the earlier petition that was filed on 14.06.24. accordingly, the petition dated 14.06.2024 is dismissed as 'Not pressed'.

Copy of this petition has been duly served upon the Prosecution. The petition under section 311 of Cr.P.C is taken up for hearing in presence of the respective sides.

Referring to the petition, Ld. Advocate for accused Mangal Yadav submits that the 3rd I.O of this case had been examined and cross-examined in full as PW-39, but cross-examination certain aspects morefully mentioned in the petition are necessary for effective adjudication of this case on merits. He, therefore makes a prayer for recall of PW-39 by allowing the present petition so that that the accused Mangal Yadav is not prejudiced in any manner.

Referring to the decision of the Hon'ble Apex Court reported in: (i) *2014(4) SCC Cri. 256* ; (ii) *2016 (1) SCC Cri. 510 and* (iii) *2021 (2) SCC Cri. 508*, Ld. Public Prosecutor, Hooghly submits that the defence had already got the opportunity to cross-examine PW-39 extensively touching all aspects. Re-call of such witness for the purpose of cross-examination to fill-up the lacunae in the cross-examination cannot be permitted. He further argued that the provisions of Section 311 of Cr.P.C with regard to the re-call of witness for the purpose of cross-examination should be used sparingly with extreme care and caution and a trial which has already been closed should not be re-opened in a routine manner. He further submits that the defence cannot be permitted to fill-up the lacunae by invoking such provisions. He therefore makes a prayer for rejection of such prayer.

In reply, Ld. Advocate for the accused submits unless an opportunity of cross-examination of PW-39 is given, accused Mongal Yadav shall be seriously prejudiced as cross-examination on certain aspects as described in the petition had not been done earlier. He further submits that the question of filling up of lacunae do not arise at all. He also submits that if the prayer is allowed, then the cross-examination shall be concluded on a single day without any adjournment and no delay will be caused due to the same.

Seen the materials on record wherefrom it appears that 39 witnesses have been examined by the prosecution so far. It is also the matter of record that the defence had already got the ample opportunity to cross-examine all such witnesses including PW-39. There is no room of doubt that the provision of Section 311 of Cr.P.C should be used sparingly and the same cannot be used for the purpose of eliciting new facts. But considering the nature and

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gravity of the alleged offence and in the interest of justice and for fair trial, relying upon the submissions advanced by Ld. Advocate for the accused, I am inclined to allow the prayer of the accused Mangal Yadav.

Accordingly, the petition filed by Ld. Advocate on behalf of accused Mongal Yadav u/s 311 of Cr.P.C is considered and allowed.

The prayer for re-call of PW-39, I.O Insp. Prodip Kumar Dan is allowed only for the purpose of cross-examination on behalf of accused Mangal Yadav based related to the matters mentioned in the petition. It is specified herein that no adjournments shall be granted for this purpose.

On the prayer of both sides, the matter is fixed on **23.07.2024** for further cross-examination of PW-39 Insp. Prodip Kumar Dan on behalf of accused Mongal Yadav.

Issue summons accordingly. Prosecution to take steps.

The accused persons are remanded to J.C till such date.

D & C by me.

Sd/-

Addl. Dist. & Sessions Judge

3rd Court, Hooghly (Sadar)

WB00891

Sd/-

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