

Sessions Serial No.585 of 2023
(CNR no WBMD01-008983-2023)

Order No. 09 dated 20.09.2024

Today is fixed for hearing of the application under Section 231 (2) of Cr.P.C. /254 of B.N.S.S. Act moved by the Ld. Defence Counsel on behalf of nine accused persons namely, Parvez Mosaraf @ Masum, Ansar Ali, Surman Sk, Minarul Hoque @ Idrish Ali, Israfil Sk @ Raja, Sultan Sk, Parvina Bibi @ Parvin Sultana, Esmatara Khatun @ Esmatara Bibi and Ibrahim Sk.

The Ld. PP in-Charge is present.

Ld. Advocate for the accused persons is also present.

The record is taken up for hearing of the petition.

Ld. Advocate for the applicants has contended before this court that examination-in-chief of PW1 Md. Safikur Rahaman is complete and the Ld. Advocate for the applicants prays before this court to defer the cross-examination of PW1 till the examination-in-chief of CSW8 Golam Murtuja , CSW13 Tasmira Bibi and CSW 14 Tanjila Bibi are complete by the prosecution. In support of his contention Ld. Advocate for the applicants has submitted that PW1 namely, Md. Safikur Rahaman, CSW8 Golam Murtuja , CSW13 Tasmira Bibi and CSW 14 Tanjila Bibi are family members and closely related to each other and hence , they are interested witnesses in this case.

In this background the Ld. Advocate for the applicants has prayed before this court to defer the cross-examination of PW1 until CSW8 Golam Murtuja , CSW13 Tasmira Bibi and CSW 14 Tanjila Bibi are being cross-examined by the prosecution taking into consideration the defence taken while cross-examining those witnesses as mentioned above may be revealed.

Ld. PP in-Charge has raised no formal objection.

Heard. Considered.

Perused the case record including the application moved by the applicants and the arguments advanced by the Ld. Advocate of the applicants.

I have also perused the statutory provision as contemplated under Section 231(2) of Cr.P.C. which confers the discretion on the judge to defer the cross-examination of any witness until any other witness or witnesses have been examined, or recall any witness for further cross-examination in appropriate cases. In this regard judicial discretion has to be exercised in consonance with the statutory framework and context while being aware of reasonably foreseeable consequences.

The parties seeking to defer of cross-examination of any witness under Section 231(2) Cr.P.C. must give sufficient reasons to invoke the exercise of discretion by judge, and deferral cannot be asserted as a mater of right.

During advancement of arguments by the Ld. Advocate for the applicants, it has been contended that PW1, CSW8 Golam Murtuja , CSW13 Tasmira Bibi and CSW 14 Tanjila Bibi are closed related to each other and they are highly interested witnesses in this case and they are supposed to depose on the same subject matter and facts related to the alleged incident.

Ld. PP in-Charge has also raised no objection regarding the rejection of the instant application moved by the applicants under Section 231(2) Cr.P.C..

In the above conspectus, the instant application moved by the applicants/ accused persons named above is hereby considered and allowed.

Ld. PP in-Charge is to ensure to complete the examination-in-chief of those witnesses at the earliest so that, the deferring of cross-examination may not result loss of memory of those witnesses during their cross-examination by the Ld. Defence Counsel.

Hence, the instant application is disposed off in above terms.

Dictated & Corrected by me.

A.S.J., Murshidabad

Additional Sessions Judge, 3rd Court,
Berhampore, Murshidabad .
(JO Code – WB01303)

Later: Order Dated 20.09.2024:

All the twelve (12) accused on C/B are present by filing hazira.

Prosecution is present with one witness namely, Tasmira Bibi (CSW 13). She is examined in full as PW2 by the prosecution and during her examination she has proved her signature on the statement recorded under Section 164 of Cr.P.C. by the Judicial Magistrate, which is marked as Exhibit-2 (collectively). Her cross-examination is deferred in terms of the order as above.

To 07.10.2024 for examination of **CSW8 and CSW14**.

Ld. PP in-charge to take steps accordingly.

C/D be produced on the next date fixed.

Accused be present before this court on the date fixed.

Dictated & Corrected by me.

A.S.J., Murshidabad

Additional Sessions Judge, 3rd Court,
Berhampore, Murshidabad .
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