

Present: SUTIRTHA BANERJEE [J.O. Code WB-00980]

Additional District & Sessions Judge , Fast Track 1st Court, Bongaon

North 24 Pgn

Order no. 6 dated 11/11/2024

Accused (4) on bail present by filing hazira.

Ld. Public Prosecutor in charge also present.

Today is fixed for evidence.

No witnesses have turned up; case is adjourned.

It appears summons have not been out in.

Schedule fixed is hence cancelled.

Ld. Advocate for accused files an application under section 231(2) Cr.P.C. .

Copy served.

Vide the said petition accused persons have submitted that C.S.W. No. 1,2 and 10 are all direct/close relatives of de-facto complainant and deceased and have prayed for deferring cross examination of all aforesaid witnesses and permission be granted to cross examine the aforesaid witnesses together or else the accused would be prejudiced as there was possibility of their defense being disclosed.

Ld. Public Prosecutor in charge raises formal objection and leaves the matter to the discretion of the Court.

Heard both sides. Considered.

Perused the record.

In **State of Kerala vs Rasheed** the Hon'ble Apex Court has held:

22. There cannot be a straitjacket formula providing for the grounds on which judicial discretion under Section 231(2) CrPC can be exercised. The exercise of discretion has to take place on a case-to-case basis. The guiding principle for a Judge under Section 231(2) CrPC is to ascertain whether prejudice would be caused to the party seeking deferral, if the application is dismissed.

23. While deciding an application under Section 231(2) CrPC, a balance must be struck between the rights of the accused, and the prerogative of the prosecution to lead evidence. The following factors must be kept in consideration:

(i) possibility of undue influence on witness(es);

(ii) possibility of threats to witness(es);

(iii) possibility that non-deferral would enable subsequent witnesses giving evidence on similar facts to tailor their testimony to circumvent the defence strategy;

(iv) possibility of loss of memory of the witness(es) whose examination-in-chief has been completed;

(v) occurrence of delay in the trial, and the non-availability of witnesses, if deferral is allowed, in view of Section 309(1) CrPC (2015) 3 SCC 220, (1984) 1 SCC 722.

These factors are illustrative for guiding the exercise of discretion by a Judge under Section 231(2) CrPC."

Again in **Md. Sanjoy And Md. Mahtab v. The State Of West Bengal** 2000 CRILJ 608 the Hon'ble High Court held:

"4. The plea taken on behalf of the petitioners is that if each witness is examined and cross-examined before the next witness is produced, in that event there will be much opportunity for the prosecution to fill up the lacuna in its case as may be disclosed in course of cross-examination of any witness, through the lips of the subsequent witnesses and therefore the defence should be given the opportunity to defer the cross-examination of all eye witnesses till they are examined-in-chief first. As I have mentioned, this is never, the practice. Cross-examination is a very effective weapon for unearthing the falsity, if any, of the evidence of any witness and all through in the history of judicial procedure this mechanism of discovering truth through efficient cross-examination has generally proved to be unfailingly effective. In a criminal trial the accused has an additional advantage inasmuch as copies of the earlier statements of the prosecution witnesses recorded under section 161 CrPC are supplied to the accused well in advance so that he can not only know to his advantage what each prosecution witness is expected to tell while in the witness box that has also the advantage of cross-examining each and every witness with reference to the earlier statements made by such witness as well as by other witnesses during investigation and of there by trying to bring out discrepancies amongst the evidence of the witnesses interse

as given in court and also discrepancies between the evidence of a witness in court and the earlier statement he made to the police.”

In the present case, it appears that C.S.W. 1, C.S.W. 2 and C.S.W. 10 are close/direct relatives of deceased/de-facto complainant and deposing on same facts is but expected and the Court does find merit with respect to prayer of deferring cross examination of C.S.W. 1, 2 and 10 on the ground prayed for.

In view of the above discussion and law as elucidated by cited judgements, the Court is inclined to allow the petition dated 11/11/2024 .

Cross examination of C.S.W. 1, C.S.W. 2 and C.S.W. 10 shall be deferred till completion of examination in chief of C.S.W. 1,2 and 10.

Fix 14/2/2025 for examination in chief of C.S.W. 1 and C.S.W. 2 and 15/2/2025 for examination in chief of C.S.W. 10.

Ld. Public Prosecutor in charge to put in summons and requisition for alamat if required.

Dictated and corrected by me:

A.D.J. , Fast Track Court, 1st Court
Bongaon, North 24 Pgns

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