

**Sessions Trial No. 03(03) of 2019**  
**S.C. 27(12)2018**  
**(CIS No. 255 of 2018)**  
**(CNR NO. WBSP07 004267-2018)**

**Present: Sri Bibhas Chatterjee (J.O.00702),  
Additional Sessions Judge, 2<sup>nd</sup> Court, Sealdah**

**Order No. 31 dated 13.7.2022**

This day is fixed for hearing of the petition dated 12.7.2022 filed by the defence Counsel under section 231(2) of Cr.P.C for deferring the cross-examination of PW4 until the cross-examination of CSW Nos. 11, 12, 13,14 and 15 has not been completed on the ground stated therein.

Perused the petition. Heard Ld. Counsel of both sides.

Ld. Advocate for the defence submits that the witnesses mentioned above are the residents of the same premises and as such, if the cross-examination of PW4 has not been deferred the defence would be disclosed and as such, defence case would be prejudiced.

Ld. PP in charge raises strong objection against the instant petition and submits that there is no sufficient and justifiable reason to defer the cross-examination of PW4 at this stage, as the witnesses mentioned above are the residents of same premises and it is settled principle of law that without justifiable ground cross-examination can not be deferred in view of section 231(2) of Cr.P.C and accordingly, prays for its dismissal.

While deciding an application under section 231(2) of Cr.P.C, I think that it would be wise and proper to refer a judgment of Hon'ble Apex Court reported in State of Kerala versus Rasheed reported in (2011) SC 2251 wherein the Hon'ble Apext Court was pleased to frame certain guidelines which are as follows.

- 1. A balance must be struck between the rights of the accused, and the prerogative of the prosecution to lead evidence.*
- 2. Possibility of undue influence or threat to the witnesses*

*3. Possibility that non deferral would enable subsequent witnesses giving evidence on similar facts to tailor their testimony to circumvent the defence strategy.*

*4. Possibility of loss of memory of the witnesses whose examination in chief has been completed.*

*5. Occurrence of delay in the trial.*

It is the settled principle of law that deferring the cross-examination of witnesses is the discretion of the court and the said application to be allowed on sufficient/reasonable ground.

In construing of the words of section 231(2) of Cr.P.C the word “permit the cross-examination on any witness to be deferred” does not indicate the legislation had ever any intention to permit the whole/entire cross-examination of the prosecution witness. The accused has no right for deferring cross-examination of the prosecution witnesses. In a wholesale way on the plea that otherwise the prosecution may take a chance of filling the lacuna and the defence case would be disclosed during cross examination.

In this case in hand, contents of the petition do not indicate that if the cross examination of the prosecution witnesses will not be deferred the defence case would be disclosed and defence would be prejudiced.

Hence, considering the aforesaid discussion and in view of the decision of the Hon'ble Apex Court, I find no justifiable ground to entertain the instant petition under section 231(2) of Cr.P.C and accordingly, the same stands rejected.

Fix 14.7.2022 for cross-examination of PW.4.

D/c by me  
Sd/- Bibhas Chatterjee  
Addl. Sessions Judge,  
2<sup>nd</sup> Court, Sealdah

Sd/-Bibhas Chatterjee  
Addl. Sessions Judge,  
2<sup>nd</sup> Court, Sealdah