

Order no. 16
06.02.2025

As fixed the record is taken up for passing order relating to the Petition U/S 231(2) Cr.P.C filed by the Ld Advocate for the accused persons (hereinafter referred to as the Petitioner).

The Ld Advocate for the Petitioner submits that the Prosecution has traveled beyond the conventional practice of examining the defacto complainant/Victim as the first witness purposefully by initiating the evidence for the prosecution by examining the doctors who happens to be CSW 17 and CSW 16 as PW1 and PW2 so that the lacuna in the prosecution case can be filled up subsequently by other witnesses and thereby depriving the accused persons from their right of fair trial. It has been stated specifically that the prosecution wants to cover-up the discrepancies in the prosecution case which may come up after the cross-examination of the Doctors, by examination of other witnesses including the victim. They have also pleaded that the defense may be disclosed if the Doctors are cross-examined at this stage. The Ld Advocate therefore has prayed for allowing the instant petition by deferring the cross examination of PW2 till the examination in chief of CSW 1, CSW2, CSW3, CSW4, CSW8, CSW13, CSW14, CSW15 are completed.

The Ld Special P.P has filed on this date a written reply wherein they have pleaded that the plea of the Ld Advocate for the defense is baseless and is based upon presumptions without having any cogent reasons. According to the Ld Advocate if proper reasoning is not given in support of their claim as to how the accused persons will be prejudiced a petition U/S 231(2) CrPC should not be allowed. Stress has also been given on the fact that as observed by Hon'ble Supreme Court, it is the prerogative of the prosecution to examine any witnesses as per the requirement of the case in hand. And the Defense cannot raise any query as to the chronology of the witnesses. It has been submitted further that only in case of exceptional circumstances the petition U/S 231(2) CrPC can be allowed. In support of their contentions the Ld Special P.P has relied upon the following Judgments.

Shamoon Ahmed Sayed & Anr Vs Intelligence Officer, 2009 Cri.L.J 1215

Vinod Kumar Vs State of Punjab (2015) 3 SCC, 220

Lt Col. S.J Chowdhury vs State 1 SCC 722.

At the very outset, it is pertinent to have a brief look into the law involved with the provision of law involved with the applicability of S 231 (2) CrPC. The said provisions lays down the discretion of the Court to defer the cross-examination till the completion of the examination in chief of other witness or witnesses. Relating to the present provision the Hon'ble Supreme Court in *State of Kerala vs Rasheed, Criminal Appeal no. 1321 of 2018* was pleased to observe that “Section 231(2) CrPC., however, confers a 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. Judicial discretion has to be exercised in consonance with the statutory framework and context while being aware of reasonably foreseeable consequences. The party seeking deferral under Section 231(2) of CrPC. must give sufficient reasons to invoke the exercise of discretion by the Judge, and deferral cannot be asserted as a matter of right”.

Our parent High Court almost in similar lines have observed in Sisir Debnath vs State of West Bengal & Anr, CRR 2533 of 2017 that mere relationship between the witnesses is no ground to defer their cross examination during trial. Deferment of cross examination of the witness is not ordinarily permitted unless exceptional circumstances justifying such procedure is warranted.

Apart from the aforementioned citations there are other catena of judicial pronouncements wherein almost similar observations have been made by the Hon’ble Courts. The principle of law which can be derived from the above discussion is that the provision of Section 231(2) of CrPC cannot be exercised as a matter of right, and though it is discretionary but it must be applied cautiously only after having sufficient cause.

Having heard the rival submissions put forth by the parties at the time of hearing, and after taking into account the principle of law as discussed above from the record it appears that the primary reason for which the Ld Advocate for the accused person has filed the instant petition is to insulate the lacuna in the case of the prosecution from subsequently being filled up by the other prosecution witnesses as the prosecution purposefully has initiated the evidence of the witnesses with the Doctor rather than following the conventional path of opening the examination of the witnesses with the defacto-complainant. As revealed from the petition, the Ld Advocate for the accused person intends to cross examine PW2 only after the completion of examination in chief of almost all the charge sheeted witnesses.

It is a settled law that the prosecution enjoys the prerogative to examine any witness as it suits the prosecution case and the defense cannot challenge the seriality of the witnesses examined by the prosecution. The Ld Advocate for the accused person has filed the petition only on anticipation that the prosecution by examining the doctors first intends to fill up the lacuna of the prosecution case without mentioning any specific ground or any exceptional circumstances for filling the petition to defer the cross-examination of the PW2 till the completion of examination in chief of all other prosecution witnesses. The Ld Advocate for the accused person seem to have categorized all the witnesses on similar footing as if the said witnesses CSW 1, CSW 2, CSW 3, CSW 4, CSW 8, CSW 13, CSW 14, CSW 15 have similar version of the alleged offense without paying much importance to their statements recorded U/S 161 of CrPC. Moreover, PW2 is one of the treating Doctors it has to be born in mind that the Doctor is an expert. It is not at all convincing that the cross-examination of an

expert may influence the deposition of other witnesses and may give an opportunity to the prosecution to fill up the lacuna. In aforementioned Sisir Debnath Case and also in State of Kerala vs Rasheed Case the Hon'ble Courts were of the view that mere relationship between the witnesses is no ground to defer the cross examination unless exceptional circumstances arise.

I therefore differ from the contention of the Ld Advocate for the defense that the accused will be deprived of the right of fair trial if the cross examination of PW2 is not deferred till the completion of the examination in chief of CSW 1, CSW 2, CSW 3, CSW 4, CSW 8, CSW 13, CSW 14, CSW 15, however, as C.S.W 18 and C.S.W 19 were part of the same team of treating doctors may be cross-examined together so that the version of the two doctors relating to the injury sustained by the victim at the time of cross examination can be free from any type of influences.

In the light of the discussions as made hereinabove, I am inclined to allow the instant petition but in part with the observation that the cross examination of PW2 cannot be deferred at this stage. Only in the event the prosecution prefers to examine both CSW 18 and CSW 19 the cross-examination of the said two witnesses shall be made on the same day following the principle as laid down in S231 of CrPC. The prosecution is also directed to file a schedule of witness they want to examine as observed by the Hon'ble Supreme Court in State of Kerala vs Rasheed Case.

The petition is accordingly disposed of.

To **06.03.2025** for filing by the Prosecution the list of witnesses in chronological order, they want to examine and cross examination of PW2.

Sd/-

ADJ FTC-1