

CIS No.74/2018
ST- 223(09)2018
CNR No.WBSP 15-000663-2018
J.O.Code- WB00859

Order No. 93

Dated: 20.01.2025

Today has been fixed for production of the accused persons and hearing of the petition dated 10.12.2024 filed by the Ld. P.P. in-charge of this case.

All the three accused persons of this case, who are in judicial custody, are produced before the Court in virtual mode.

The Ld. P.P. in-charge of this case and the Ld. Advocates of all the three accused persons are present.

The petition dated 10.12.2024 is taken up for hearing.

Perused the said petition and the case record.

By the said petition the prosecution has prayed for an order for marking the confessional statements of all the witnesses recorded u/s 164 Cr.P.C. as exhibits in this case by following the provision of section 294 Cr.P.C.

The Ld. P.P. in-charge of this case submitted that all the witnesses, whose statements were recorded u/s 164 Cr.P.C., were examined in this case as prosecution witnesses. During their evidence all the said witnesses identified their signatures in their respective statements u/s 164 Cr.P.C. and their signatures were marked as exhibits. However, the statements of the said witnesses have not yet been marked as exhibits. According to the Ld. P.P. in-charge of this case, there is no need for examining the Ld. Judicial Magistrate, who recorded the statements u/s 164 Cr.P.C., for marking them as exhibits as the accused persons have not denied the genuineness of the said three statements u/s 164 Cr.P.C.. Therefore, they can be marked as exhibits following the provision of section 294 Cr.P.C. Accordingly, he prayed for allowing the petition dated 10.12.2024.

The Ld. Advocates of all the accused persons raised their objection against the said prayer of the prosecution. Ld. Advocates of all the three accused persons submitted that this petition has been filed on behalf of the prosecution only to fill up the lacuna of the prosecution case and accordingly the said petition should be rejected. They further argued that all the witnesses, whose statements were recorded u/s 164 Cr.P.C., were examined long time back and the prosecution was sleeping over the matter till the end of the year 2024. Thus, according to the Ld. Advocates of the accused persons this petition has been barred by limitation and the same is not maintainable. The said Ld. Advocates further took a point that in the petition under consideration the Ld. P.P. in-charge of the case has mentioned about marking the confessional statements as exhibits. However, according to them there is no confessional statement in this case record. Accordingly the Ld. Advocates and the accused persons prayed for rejection of the petition dated 10.12.2024.

On perusal of the record it appears that there are four statements in this case recorded u/s 164 Cr.P.C. The said statements were given by PW2, PW3, PW4 and PW10. The case record further reveals that the examination of the prosecution witnesses ended on 24.09.2024. Thereafter the accused persons were examined u/s 313 Cr.P.C. on 10.12.2024. On the same day i.e. 10.12.2024, the Ld. P.P. in-charge of this case filed the instant application under consideration. PW2 and PW3 were examined in the year 2019. PW4 was examined in the year 2021 and PW10 was examined in the year 2023. Therefore, it is a fact that the petition under consideration has been filed at a belated stage. However, if we go through section 294 Cr.P.C., it can be seen that no specific period/ time limit for filing an application under the said section has been mentioned. Thus, the submission made by Ld. Advocates of the accused persons that the petition under consideration is barred by limitation is not tenable under the law.

The second argument raised by the Ld. Advocate of the accused persons is that the petition has been filed for filling up the lacuna of the prosecution case. In this respect one has to keep in mind that section 294 Cr.P.C. has been provided with the object of accelerating the pace of trial by

avoiding the time wasted in recording unnecessary evidence. Under the law where genuineness of any document is admitted or not objected to, formal proof of the said document can be dispensed with. Therefore, section 294 Cr.P.C. has no connection with filling up of lacuna of the parties. It is purely a legal consequence.

In the instant case neither of the accused persons have denied the genuineness of the statements recorded u/s 164 Cr.P.C. of PW2, PW3, PW4 and PW10. As soon as there is no dispute regarding the genuineness of those four statements, they can be read in evidence without proof of the signature and the Ld. Judicial Magistrate who has prepared the said statement.

Regarding the argument of the Ld. Advocates of the accused persons that as there is no confessional statement in this record the petition is not maintainable, this court is of the opinion that choice of a wrong word or phrase in a petition cannot make the whole petition non maintainable when the actual prayer of the petition can be understood from the remaining portion of the same petition. In this case admittedly there is no confessional statement of the accused persons but there are four judicial statements by four witnesses. It can be very well understood that the petition under consideration has been filed in respect of the said four judicial statements by four witnesses.

Considering all aspects and based on the above discussions, this Court is of the opinion that there is no bar in allowing the petition of the prosecution dated 10.12.2024.

Hence, it is

ORDERED

That the petition under section 294 Cr.P.C. filed by the Ld. P.P. in-charge of this case on 10.12.2024 is allowed on contest without cost.

The statements of PW2, PW3, PW4 and PW10 recorded u/s 164 Cr.P.C. be marked as exhibit nos. 27, 28, 29 & 30 respectively.

Fix 06.02.2025 for argument of this case and production of the accused persons.

D/C by me,

Sd/- A. Chattopadhyay

A.S.J. 2nd Court, Kakdwip
South 24 Parganas

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