

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

Order No. 95

Dated: 19.02.2025

Today has been fixed for further hearing of the petition u/s 311 Cr.P.C. dated 06.02.2025 and production of the accused persons.

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

Heard the Ld. Advocate of two accused persons namely, Biswanath Patra and Sripati Halder.

The said Ld. Advocate submitted that the provision u/s 311 Cr.P.C. is available only to the Court and not to any party to the proceeding. Thus, the instant petition filed on behalf of the prosecution is not maintainable. Moreover, he submitted that the instant petition has been filed at a belated stage after the examination of the accused persons u/s 313 Cr.P.C. only to fill up the lacuna of the prosecution case and accordingly the said petition should be rejected.

Earlier the Ld. Advocate of the accused person namely Narayan Rang argued on the same ground of delay in filing of the instant petition and also on the point of filling up of lacuna by the prosecution.

The Ld. P.P. argued that due to oversight of the earlier Ld. P.P. of this case, the 3rd I.O. and the scientific expert could not be examined as witnesses in this case. However, the evidence of the said two witnesses are vital and important for the case of the prosecution. Thus, he prayed for allowing the said petition and examining the said two witnesses.

It is a fact that the examination of the accused persons of this case was made on 10.12.2024. On that day the Ld. P.P. filed a petition u/s 294 Cr.P.C. praying for exhibiting the statements of four witnesses made u/s 164 Cr.P.C. The said petition was allowed by this Court by order dated 20.01.2025 and the case was fixed for argument on 06.02.2025.

On 06.02.2025 the Ld. P.P. filed the instant petition under consideration praying for examining two witnesses namely Sk. Jahangir Ali, 3rd I.O. of this case and Dr. Chitrakshya Sarkar, senior scientific expert who prepared the FASL report in connection with this case.

Thus, it is clear that the instant petition under consideration has been filed at a quite belated stage.

The Hon'ble Apex Court in its judgment reported in *Natasha Singh Vs C.B.I. (State) 2013 (5) SCC 741* made the following observation regarding section 311 Cr.P.C.

“The scope and object of the provision is to enable the court to determine the truth and to render a just decision after discovering all relevant facts and obtaining proper proof of such facts, to arrive at a just decision of the case. Power must be exercised judiciously and not capriciously or arbitrarily, as any improper or capricious exercise of such power may lead to undesirable results. An application under Section 311 Cr.P.C must not be allowed only to fill up a lacuna in the case of the prosecution, or of the defence, or to the disadvantage of the accused, or to cause serious prejudice to the defence of the accused, or to give an unfair advantage to the opposite party. Further, the additional evidence must not be received as a disguise for retrial, or to change the nature of the case against either of the parties. Such a power must be exercised, provided that the evidence that is likely to be tendered by a witness, is germane to the issue involved. An opportunity of rebuttal however, must be given to the other party. The power conferred under Section 311 Cr.P.C. must therefore, be invoked by the court only in order to meet the ends of justice, for strong and valid reasons, and the same must be exercised with great caution and circumspection. They very use of words such as “any Court”, “at any stage”, or “or any enquiry, trial or

other proceedings”, “any person” and “any such person” clearly spells out that the provisions of this section have been expressed in the widest possible terms, and do not limit the discretion of the Court in any way. There is thus no escape if the fresh evidence to be obtained is essential to the just decision of the case. The determinative factor should therefore be, whether the summoning/ recalling of the said witness is in fact, essential to the just decision of the case”.

Though it is expected that the trial of a sessions case should be made expeditiously, the delay in the trial cannot displace the basic requirement of ensuring the just decision of the case. Thus, if it is found that examination of a witness is necessary for the proper adjudication of the case, the age of the case should not be a decisive factor or consideration for not examining the said witness.

Regarding the argument made by the Ld. Advocate of the accused persons namely Biswanath Patra and Sripati Halder that a petition u/s 311 Cr.P.C. cannot be made by a party to the proceeding, this Court would like to observe that every party to a litigation has the duty to inform the Court if any relevant matter has been omitted during the course of trial. The responsibility of the public prosecutor in this regard is even more higher. It is expected from him that he should draw the attention of the Court to any material and essential thing if it has been over looked by the Court. The role of a public prosecutor is to assist the Court in arriving at a just and proper decision. Thus, it is always open to both the parties before a Court of law to approach the Court with any prayer which enables the Court to render proper justice. Accordingly, the aforesaid argument made by the Ld. Advocate of the accused persons namely Biswanath Patra and Sripati Halder is not tenable.

Now regarding the submission made by the Ld. Advocates of all the accused persons regarding filling up of lacuna by filing the instant petition, this Court is of the opinion that the said argument is also not acceptable as the prosecution in this case is trying to bring to the judicial notice of this Court a report of the scientific expert regarding an object/ material seized during investigation of this case. The said report was already on record and within the knowledge of the accused persons. Thus, evidence in connection with the said scientific report cannot prejudice the interest of the accused persons or it cannot be said to fill up the lacuna of the prosecution case.

According to this Court, the evidence of the 3rd I.O. and the scientific expert who prepared the FASL report is essential for the just decision of this case and accordingly the prayer of the prosecution is liable to be allowed.

Thus, the petition dated 06.02.2025 filed by the Ld. P.P. in-charge of this case u/s 311 Cr.P.C. is allowed on contest without cost.

Fix 10.03.2025 for evidence of two witnesses namely Sk. Jahangir Ali, 3rd I.O. of this case and Dr. Chitrakshya Sarkar, senior scientific expert 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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