



IN THE HIGH COURT AT CALCUTTA

CRIMINAL REVISIONAL JURISDICTION

[CIRCUIT BENCH AT PORT BLAIR]

PRESENT: THE HON'BLE JUSTICE SABYASACHI BHATTACHARYYA

CRR/21/2026

SHRI SWAPAN KUMAR DUTTA ... PETITIONER

VS.

THE STATE ... OPPOSITE PARTY

For the petitioner : Mr. KMB Jayapal

For the State : Mr. Sumit Kumar Karmakar

Heard on : April 21, 2026

Judgment on : April 21, 2026

SABYASACHI BHATTACHARYYA, J.

1. The present revisional application has been preferred against an order whereby the learned Judicial Magistrate, First Class-I, on the prayer of the learned Additional Public Prosecutor, allowed an application of the prosecution, thereby holding that in absence of any specific order, there is no scope of holding further DW in the case.

2. Learned counsel appearing for the petitioner argues that the backdrop of the case is that initially the criminal trial culminated in acquittal of the petitioner/accused. The said judgment was reversed in appeal, against which a revisional application was preferred before this court.



3. While deciding the same, vide judgment dated April, 29, 2022, a coordinate Bench of this Court remanded the matter with the direction to grant opportunity to the petitioner/accused to examine/cross-examine the government examiner of questioned documents and pass a fresh judgment on the basis of the evidence on record within three months from the date of the communication of the order.

4. It is argued that while permitting the petitioner to cross examine the government examiner, the learned Single Judge did not restrict the remand order to such cross examination only but had set aside the entire judgment of the learned Sessions Judge and sent the entire matter back in an open remand.

5. The petitioner argues that in the absence of any such preclusion, the learned Judicial Magistrate acted without jurisdiction in foreclosing the deposition of the independent defence witness sought to be adduced by the petitioner.

6. Secondly, it is argued by the petitioner that there is very limited scope of altering an order once passed by the criminal court. Section 362 of the Code of Criminal Procedure, 1973 stipulates that no court, when it has signed a judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error.

7. It is submitted that the application of the prosecution before the Judicial Magistrate was not of the nature as covered by Section 362 and in effect, the learned Judicial Magistrate recalled his earlier order bearing No.165 dated February 11, 2026, by which the next date was



fixed for adduction of evidence by the present petitioner as DW. Thus, it is contended that the impugned order ought to be set aside.

8. Finally, it is contended by the petitioner that since the petitioner was examined under Section 313 of the Code of Criminal Procedure, the learned Judicial Magistrate, in any event, had permitted further evidence and could easily have permitted the petitioner to lead independent evidence as well.

9. Learned Public Prosecutor, while controverting the arguments of the petitioner, submits that it will be evident from the remand order itself that it was passed on the limited ground of the petitioner having been deprived of the opportunity to cross examine the government examiner of questioned documents, since the document-in-question was germane for adjudication of the matter.

10. However, it is pointed out that the petitioner, after remand, sought to expand the scope of the remand by seeking to adduce independent evidence of defence witnesses, which was not permissible in terms of the remand order.

11. It is further contended that although the petitioner was examined under Section 313 of the Code of Criminal Procedure, such examination was limited to the context of the fresh evidence which was led on the questioned document by the cross examination by the petitioner.

12. However, it is contended that such limited examination under Section 313 did not entitle the petitioner to reopen the entire trial by



adducing independent evidence, having already lost such opportunity in the first round of litigation.

13. Upon a perusal of the impugned order, it is found that, by the impugned order, the learned Judicial Magistrate did not specifically recall or review the earlier order dated February 11, 2026, whereby the next date was fixed for evidence of the defence witnesses.

14. By Order No. 165 dated February 11, 2026, no specific adjudication was made on the question as to whether the petitioner is entitled to lead independent defence witness. By the said order, the learned Judicial Magistrate had merely fixed the next date for deposition of defence witnesses on the prayer of the petitioner.

15. Thus, this Court does not find that any jurisdictional error was committed by the learned Judicial Magistrate by observing in the impugned order that there was no scope of adducing further evidence.

16. Even otherwise, the power is inherent in any court of law to rectify its records in the event the court commits an error which is apparent on the face of the record, irrespective of whether it is in connection with a criminal trial or a civil suit.

17. Seen from such perspectives, merely because the learned Judicial Magistrate effectively negated the earlier order dated February 11, 2026 by closing DW evidence, it cannot be said that the Magistrate lacked inherent jurisdiction to correct its earlier position if there was a glaring error on the face of it.



18. The next question which crops up, obviously, is whether there was any such glaring error.

19. Upon a careful scrutiny of the remand order dated April 29, 2022 passed in CRR/15/2021, it immediately catches the eye that in paragraph no. 17 thereof, the learned Single Judge had categorically observed that the matter was being sent back on remand to the Judicial Magistrate, Port Blair with a direction that an opportunity may be given to the petitioner/accused to examine and cross examine the government examiner of questioned documents and to pass a fresh judgment “on the basis of evidence on record” within three months from the date of communication of the order.

20. The expression “on the basis of evidence on record” clearly meant that the adjudication had to be made on the basis of the evidence which was already on record on the date of the order of remand and the limited scope of the remand, although couched in the language of an open remand, was specifically to grant an opportunity to the petitioner to examine/cross-examine the government examiner of questioned documents.

21. Section 313 of the Criminal Procedure Code, as rightly argued by the learned Public Prosecutor, operates within a limited periphery, solely for the purpose of enabling the accused person personally “to explain any circumstances appearing in the evidence against him”.

22. The occasion to permit examination of the petitioner under Section 313 evidently arose in view of the further cross examination



made by the petitioner in respect of the government examiner, which was required in law to be undertaken. However, the exercise under Section 313 of the Code of Criminal Procedure could not justify throwing open the trial afresh, after the petitioner had already lost his opportunity to adduce independent witness as defence witness in the first round of litigation.

23. Seen in the above context, the learned Judicial Magistrate, First Class was justified in closing the evidence and not permitting the petitioner to initiate *de novo* trial by adducing independent evidence as DW in the case, which would be beyond the scope of the remand, particularly in the teeth of the fact that the petitioner had already lost such opportunity in the earlier round of litigation.

24. Accordingly, I do not find any illegality or jurisdictional error in the impugned order.

25. Hence, CRR/21/2026 is dismissed on contest, thereby affirming the order bearing No.168 dated February 24, 2026 passed in GR Case No.3844 of 2005 by the Judicial Magistrate, First Class-I at Port Blair.

26. There will be no order as to costs.

27. Urgent Photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Sabyasachi Bhattacharyya, J.)