

**IN THE HIGH COURT AT CALCUTTA**

CRIMINAL REVISIONAL JURISDICTION

[CIRCUIT BENCH AT PORT BLAIR]

PRESENT: HON'BLE JUSTICE APURBA SINHA RAY**CRR/62/2025***Shri Krishna Mohan Das ... Revisionist**Versus**The State**... Respondent*

For the petitioner

: Mr. Gopala Binnu Kumar

: Mrs. Vinita Devi

For the State

: Mr. Sumit Kumar Karmakar

Heard on

: 03.02.2026

Judgment on

: 05.02.2026

APURBA SINHA RAY, J.

1. This revisional application is filed challenging the order dated 15.10.2025 passed by the learned Special Judge (POCSO), North and Middle Andaman, Mayabunder in Special Case No. 11 of 2022 under Section 6/12 of the Protection of Children from Sexual Offence Act, 2012 read with Section 376/506 of the Indian Penal Code and 66(E) of Information Technology Act whereby the learned Trial Judge rejected the petitioner/accused's prayer for recalling of seven prosecution witnesses for re-cross-examination.



2. Mr. Gopala Binnu Kumar, learned Counsel appearing for the petitioner submits that the relevant case has a chequered history. Initially, on 31.08.2022, the learned Trial Judge convicted the accused but the said judgment was set aside in an appeal being CRA(B)/9/2022 on 09.04.2024 and the learned Trial Judge was directed to examine the accused under Section 313 of Code of the Criminal Procedure and to write a judgment afresh in accordance with law. In view of such directions, the learned Trial Judge has completed the examination of the accused under Section 313 of the Code of Criminal Procedure. After his examination under Section 313 of the Code of Criminal Procedure was over, the accused filed an application for re-cross-examination of several PWs, as the newly appointed advocate on behalf of the accused had found that the cross-examination of vital witnesses were not properly done by the erstwhile learned Counsel of the accused but the said petition was rejected by the learned Trial Judge. Mr. Gopala Binnu Kumar further contends that if the prayer of the accused is not allowed, the accused would be prevented from putting up real defence and may suffer irreparable loss for the fault of his erstwhile Counsel.

3. Mr. Sumit Kumar Karmakar, learned Counsel appearing for the State has vehemently opposed the prayer of the



petitioner. According to him, law does not allow the defence to fill up the lacuna which arises during examination and cross-examination of the prosecution witnesses. The petitioner had sufficient opportunity to cross-examine all PWs at the appropriate time, but that was not done. The petition has been filed only to delay the proceeding before the learned Trial Judge, as the petitioner is already on bail.

4. After hearing the learned Counsel of the parties, I find that the learned Trial Judge had rejected such prayer of the petitioner on the ground that the Hon'ble Supreme Court had held that recall of victim/witnesses in POCSO matters should be avoided unless the same is absolutely essential. Learned Special Judge has also mentioned in his order that mere change of learned Counsel or a general allegation of an ineffective cross-examination cannot be a ground for reopening of prosecution evidence.

5. The observation of the learned Trial Judge is absolutely correct and there are no two opinions that the vulnerable witnesses in POCSO matters should not be called time and again at the instance of the accused on flimsy grounds. But each case has to be judged on its own merits.

6. I have gone through the evidence of the victim, her parents and other witnesses. It appears that although the victim



and vulnerable witnesses have been given sufficient protection and privilege under the prevalent law of land, as depicted in the order dated 15.10.2025, but at the same time, the right of the accused to defend himself with the competent legal advice should not be lost sight of. Let us see whether the grievance of the petitioner is unfounded, baseless or it is one of dilatory tactics on the part of the petitioner.

7. After going through the examination and cross-examination of the PWs, I find some merits in the contention of the learned Counsel of the petitioner/accused. The cross-examination of PWs done on behalf of the accused appears to be deficient, casual, and if such cryptic cross-examination is allowed to remain on the record then there are chances that the accused may not be able to defend his case properly in accordance with law. The laches on the part of the concerned advocate of the accused may ultimately cost the accused heavily in near future, and as the petitioner is now able to get competent legal advice to defend his case, I think that the prayer for re-cross-examination of the PWs on the points mentioned in the revisional application should be allowed since it is absolutely essential for the accused to defend his case properly.



8. Accordingly, the impugned order dated 15.10.2025 passed by the learned Special Judge (POCSO), North and Middle Andaman, Mayabunder in connection with Special Case No. 11 of 2022 is hereby set aside.

9. The learned Special Judge, as stated above, is to allow the prayer for re-cross-examination of the PWs on the points mentioned in the revisional application strictly in accordance with law.

10. A certified copy of the present revisional application be placed before the learned Special Judge (POCSO) for noting down the points on which the defence wants to re-cross-examine the prosecution witnesses mentioned in the said revisional application.

11. With the above direction, CRR 62 of 2025 is thus allowed.

12. No order as to costs.

13. The criminal revisional application stands disposed of along with all connected applications, if any.

14. Let the Trial Court Record be sent down immediately to the Learned Trial Court along with a copy of this judgment.

15. Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance of usual formalities.

[APURBA SINHA RAY, J.]