(2004) 07 CAL CK 0059

Calcutta High Court

Case No: C.R.R. No. 2834 of 2001

Rama Goswami		APPELLANT
	Vs	
Lakshmi Kanta Roy and Others		RESPONDENT

Date of Decision: July 9, 2004

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 156(3), 173(8), 200, 251, 311
- Evidence Act, 1872 - Section 165
- Penal Code, 1860 (IPC) - Section 114, 350, 351, 353, 354

Citation: (2005) 2 CALLT 451 : (2005) 4 CHN 471

Hon'ble Judges: Pravendu Narayan Sinha, J

Bench: Single Bench

Advocate: Joymalya Bagchi and Jayanta Narayan Chatterjee, for the Appellant;Sudipto Moitra and Sandipan Ganguly, for the Respondent

Judgement

Pravendu Narayan Sinha, J.

This revisional application under Sections 397 and 401 read with Section 482 of the Code of Criminal Procedure (hereinafter called as Code) has been preferred by the petitioner, the victim challenging the judgment and order of acquittal dated 18.05.01 passed by the learned Judicial Magistrate, 5th Court, Sealdah in G.R. Case No. 1183 of 2000 (T.R. No. 3443 of 2000) arising out of Narkeldanga P.S. Case No. 115 dated 12.05.2000 under Sections 353/114 of the Indian Penal Code (hereinafter called the IPC).

2. Before entering into the merits of the case it would be fruitful to mention in short the facts which resulted into the filing of the present revisional application. The prosecution case as it appears, in short, is that on 14.4.2004 S.I. M. Rahaman (P.W. 3) of Narkeldanga P.S. while on patrol duty received information of disturbance at premises No. 15, Narkeldanga North Road and receiving such information he

arrived at spot. It was then about 10.30 P.M. and the police officer noticed gathering of some people in front of premises No. 15/H/12, Narkeldanga North Road and he found that an altercation was going on between the petitioner Rama Goswami (P.W. 1) and her husband Sanjib Goswami (P.W. 2) and the present opposite party Nos. 1 and 2 over use of urinal which was situated near petitioner''s kitchen. It is alleged that the opposite parties who were male accused persons in her case, outraged modesty of petitioner and torn her blouse. P.W. 3 S.I. M. Rahaman recorded suo motu First Information Report being Narkeldanga P.S. Case No. 115 dated 12.5.2000 and after completing investigation submitted charge sheet on 5.9.2000 and accused opposite party Nos. 1 and 2 were sent up for trial. In the trial only three witnesses were examined by the prosecution namely, the petitioner (P.W. 1), her husband (P.W. 2) and the Investigating Officer-cum-First Information Report maker (hereinafter called the I.O.) S.I. M, Rahaman and after considering the evidence the learned Magistrate acquitted the accused persons. Being aggrieved by and dissatisfied with the Judgment and order of acquittal the victim i.e. the present petitioner has moved this Court in this revisional application. Her contention is that the learned Magistrate erred in law giving undue stress on the discrepancies of time which was ignorable. Learned Magistrate also committed mistake and failed to realise the ingredients of outraging modesty of a women. Learned Magistrate also did not take into consideration that the prosecution case was uncontroverted by the defence.

3. Mr. Joymalya Bagchi, learned advocate appearing for the petitioner contended that the incident was on 15.4.2000 and the S.I. M. Rahaman receiving information of disturbance came to the spot on that very night on 15.4.2000, but strange enough, he did not take any action for about a month and lodged suo motu First Information Report on 12.5.2000. No explanation has been given in the First Information Report as to why for about a month no First Information Report was lodged at the police station. The petitioner and her husband ran over pillar to post and moved before the higher superior officers and thereafter only to show a light case the alleged First Information Report was lodged on 12.5.2000 under Sections 354/114 of Indian Penal Code. On the contrary, the victim P.W. 1 in her evidence stated that the accused opposite parties made attempt to rape her and her husband P.W. 2 stated that she was in fact raped by the accused opposite parties. Therefore, it is clear that though a case u/s 376 Indian Penal Code was there or at least Sections 378/511 of Indian Penal Code was there, the police officer being influenced by the accused persons started a lighter case under Sections 354/114 of Indian Penal Code. The Investigating Officer (hereinafter called the I.O.) made perfunctory investigation and he did not seize anything. The I.O. did not send the victim to medical examination to ascertain whether she was actually raped or not. The complainant informed sO many superior officers and thereafter only about a month later a so called light case was started.

4. He further contended that the learned Magistrate failed to apply his mind properly and if he properly scrutinized the evidence it would have been found by him that the evidence of P.W. 1 and P.W. 2 at least revealed materials of outraging modesty of the victim. The learned Magistrate did not call for the general diary to ascertain what type of information was received by P.W. 3 M. Rahaman at Police Station and receiving such information he allegedly came to the premises in question at 10.30 P.M. and found gathering of people. According to P.W. 1 and P.W. 2 the actual incident of torture on the victim took place at about 11.30 P.M. and learned Magistrate committed illegality by taking serious exception as to this difference of time and observing that the difference of time was very vital. It may be that the disturbance started at 10.30 P.M. but the learned Magistrate did not consider that thereafter at about 11.30 P.M. the victim was tortured by the accused persons after the police officer went away. The I.O. did not examine the persons whom he found at the entrance of premises in question. It is not clear why the I.O. did not lodge the First Information Report on the very same day. The learned Judge mainly relied on defective investigation but did not consider that investigation was intentionally made perfunctory by interested police person to secure acquittal of accused. Learned Judge has erred in law by disbelieving the evidence and the incident as the First Information Report was lodged about one month after. The victim approached the Deputy Commissioner of Police, Detective Department, the political leaders and many other persons and informed them by writing letters to take action, but the I.O. did not seize any such letter. Delay in sexual offences should not go against prosecution and the victims attempt from pillar to post for justice sufficiently explained the delay. If in the instant case this Court, which is the highest Court of State, approves the order of acquittal it would give valid stamp on injustice and would result sufferings of justice. The I.O. dealt with the entire case in a very negligent manner.

5. He further contended that if there was manifest injustice this Court would definitely interfere under its revisional power. It was not a charge sheet in fact submitted by I.O. but it was a sham charge sheet and the main purpose and object of investigation was misused by S.I. M. Rahaman. The I.O. did not inform the victim about result of investigation and I.O. is bound to inform the informant even a light charge sheet is filed. Learned Magistrate remained a silent spectator and did not exercise his jurisdiction properly to reveal truth. The learned Magistrate did not call for general diary and also did not summon the superior police officers before whom the victim ad her husband made complaint. In the instant case the victim did not get a fair trial and, therefore, scope of fair trial should be given in the instant matter. There cannot be nothing more unjust when a trial was ensured on unfair investigation. The learned Magistrate should have applied jurisdiction u/s 311 of the Code to call for the case diary and other witnesses.

6. Referring the decision in Umakant Chowdhury v. Rahul Dutta reported in 2003(2) CHN 68 he contended that this Court observed that in the eye of law both accused

and de facto complainant are equal and as such it is incumbent upon the Court to see that proper justice is not only done to the accused but it is equally done to the de facto complainant. In Ayodhya Dube and Others Vs. Ram Sumer Singh, the Supreme Court observed that when the Sessions Judge acquitted the accused by ignoring the probative value of First Information Report and reliable testimony of eye witnesses and without considering material evidence on record and its judgment was full of inconsistencies and consisted of fully reasoning, the order of the High Court in revision directing retrial by setting aside acquittal would be justified. In State of Rajasthan v. Ani @ Hanif reported in 1997 SCC(Cri) 851 the Supreme Court observed that criminal trial should not turn out to be a bout or combat between two rival sides with the Judge performing the role only of a spectator or even an umpire to pronounce finally who won the race. The Judge is expected to actively participate in the trial, elicit necessary material from the witnesses in appropriate context which he feels necessary for reaching the correct conclusion. There is nothing which inhibits his power to put question to the witnesses either chief examination, cross-examination or re-examination to elicit truth.

7. In Munni Rajak Vs. Sumit Banerjee and Another, this Court observed that the revisional Court should be extremely show in interfering with an order of acquittal unless and until there is some perversity and/or other patent illegality this Court should not interfere. Unless the order of acquittal has resulted in a miscarriage of justice, the revisional Court would not be justified in interfering with the order of acquittal passed validly by a Trial Court. He contended that in the instant matter this Court send back the matter on remand to the learned Trial Court for fresh decision. He contended that very recently the Supreme Court in the case known as Best Bakary case in Zahira Habibullah v. State of Gujarat reported in 2004(3) Sc 210 observed that "In the case of defective investigation the Court has to be circumspect in evaluating the evidence and may have to adopt an active and analytical role to ensure that truth is found by having recourse to Section 311 or at a later stage also resorting to Section 391 instead of throwing hands in the air in despair. It would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the Investigating Officer if the investigation is designedly defective." He contended that it is a fit case in which the Trial Court should exercise its power to call for the general diary and summon the other important witnesses before whom the victim and her husband lodged complaints and wrote several letters and it is a fit case for setting aside the order of acquittal and sending back the case to remand for retrial.

8. Mr. Sudipta Moitra, learned senor advocate appearing for the opposite party contended that scope of this Court in revisional jurisdiction particularly concerning order of acquittal is very limited and this Court should not interfere unless the order was perverse or patently illegal. The case was under Sections 354/114 of Indian Penal Code and the First Information Report was lodged one month after the

alleged incident. It is a matter of dispute between landlord and tenant and the designated accused persons are the landlords and the victim and her husband are the tenants and the tenants in order to teach a lesson to the landlord and to create pressure on the landlord motivatedly made a false case of alleged rape on the victim. Only three witnesses were cited in the charge sheet. The victim was fully aware that a case u/s 354 of Indian Penal Code has been started and she could have made complaint before the learned Magistrate for graver section or could have requested the learned Magistrate for further investigation. She did not inform the learned Magistrate that there were other witnesses of the incident which require further investigation. After full trial and after order of acquittal all these allegations of defective investigation or failure of the learned Judge to apply mind are unacceptable. There was longstanding dispute between the landlord and tenant and the landlords who were made accused had no criminal background.

9. He further contended that the learned trial Judge found serious discrepancies between the evidence of P.W. 1 and P.W. 2 as P.W. 1, the victim herself, stated that there was an attempt to rape her, whereas her husband P.W. 2, stated that his wife was raped. The allegation is that 10/12 persons entered into their premises and if 10/12 persons had committed the rape, the victim would have sustained serious injuries and her life would have been in danger. But nothing such happened nor she was admitted in hospital or any nursing home nor she was examined by doctor. The judgment delivered by learned Trial Court does not suffer from any illegality. The victim or her husband could have lodged First Information Report before the police or if police was inactive they could have filed complaint before the learned Magistrate for investigation u/s 156(3) of the Code or they could have filed complaint for taking cognizance by learned Magistrate and to proceed thereafter under the provisions of Section 200 of the Code. On the same night the victim and her husband were taken to police station but they did not lodge any general diary or First Information Report. There was serious discrepancy relating time of incident as P.W. 1 and P.W. 2 stated that the incident took place at about 11.30 P.M. whereas P.W. 3 started that at about 10.30 P.M. he received information regarding disturbance. In the First Information Report there is no story of rape but only dragging of the victim. In First Information Report there was name of only two persons who are the present opposite parties and they are the landlords. He further contended that if 10/12 persons raped the victim she would have sustained serious injuries and it shows that substratum of alleged prosecution case is absolutely absurd. The revisional application has no merit and there is nothing to show that order of the learned Judge was perverse or patently illegal or that it caused miscarriage of Justice. Accordingly, the revisional application should be dismissed.

10. In support of his contention Mr. Moitra cited few decisions which are as follows:

Akalu Ahir and Others Vs. Ramdeo Ram, ,

P.N. Gajapathi Raju and Ors. v. B.P. Appadu and Anr. reported in 1975 SCC (Cri) 543,

Bansi Lal and Ors. v. Laxman Singh reported in 1986 SCC (Cri) 342,

Thankappan Nadar and Ors. v. Gopala Krishnan and Anr. reported in JT 2002 (suppl. 1) SC 474 and

Bindeshwari Prasad Singh v. State of Bihar reported in 2002 Cri LJ 3788.

11. He contended that the Supreme Court in Akalu Ahir (supra) and P.N. Gajapathi''s case (supra) observed that it is settled law that the revisional jurisdiction, when invoked by a private complainant against an order of acquittal, ought not to be exercised lightly and that it can be exercised only in exceptional cases where the interests of public justice require interference for the correction of a manifest illegality or the prevention of a gross miscarriage of justice. It was further observed that it is only in glaring cases of injustice resulting from some violation of fundamental principles of law by the Trial Court in the course of trial, that the High Court is empowered to set aside the order of acquittal and direct the retrial of the accused persons. In Bindeshwari Prasad Singh''s case (supra) the Supreme Court reiterated the same view and observed that in the absence of any legal infirmity either in the procedure or in the conduct of the trial there was no justification for the High Court to interfere in exercise of its revisional jurisdiction at the instance of the informant. It may be that the High Court on appreciation of evidence on record may reach a conclusion different from that of the Trial Court. But that by itself is no justification for exercise of revisional jurisdiction u/s 401 against a judgment of acquittal. In Bansi Lal''s case (supra) and in Thankappan Nadar''s case (supra) the High Court in exercise of revisional jurisdiction set aside the order of the Trial Court but the Supreme Court observed that the High Court exceeded its revisional jurisdiction in re-examining the evidence and reversing order of acquittal passed by the Trial Court and accordingly set aside the order of the High Court. He contended that in the instant matter there is no manifest illegality or gross miscarriage of justice in the order of the Trial Court regarding acquittal of the accused opposite parties. Therefore, in the instant revisional application there is no scope for this Court to interfere into the matter and to set aside the order of acquittal and to pass order of retrial. The revisional application accordingly requires to be dismissed.

12. I have duly considered the submissions made by the learned advocates of the parties and perused the revisional application and annexures and also the contents of the lower Court record. I fully agree with the views of Mr. Moitra, learned senior advocate for the opposite party considering the decisions of the Supreme Court referred to above by him that, in the absence of any legal infirmity either in the procedure or in the conduct of the trial, there was no justification for the High Court to interfere in exercise of its revisional jurisdiction at the instance of the informant. It may be that the High Court on appreciation of the evidence on record may reach a conclusion different from that of the Trial Court. But that by itself is no justification for exercise of revisional jurisdiction u/s 401 against a Judgment of acquittal. The Supreme Court has repeatedly observed that in exercise of revisional jurisdiction

against an order of acquittal at the instance of a private party, the Court exercises only limited jurisdiction and should not constitute itself into an appellate Court which has a much wider jurisdiction to go into the questions of facts and law, and to convert an order of acquittal into one of conviction.

13. In Bansi Lal''s case (supra) it was observed by the Supreme Court that, "From the record of the case it appears that the view of the Trial Court was a possible view and it cannot be characterized as legal or perverse. It may be that the High Court was not inclined to agree with the said view on the basis of his independent scrutiny and appreciation of the evidence adduced in the case but that would not furnish any justification for interference in revision with the order of acquittal passed by the Trial Court. Even in an appeal the appellate Court would not have been justified in interfering with an acquittal merely because it was inclined to differ from the findings of the fact reached by the Trial Court on the appreciation of the evidence. The revisional power of the High Court is more restricted in its scope." Keeping in mind the principles of law as enunciated by the Supreme Court let us enter into the merit of the revisional application filed by the petitioner challenging the order of acquittal passed by the learned Trial Court.

14. It appears from the judgment delivered by the learned Magistrate that he discussed mainly the discrepancy in time of incident between the evidence of P.W. 1 and P.W. 2 on one side and evidence of P.W. 3 on the other side as according to P.W. 1 and P.W. 2 the incident took place at about 11.30 at night whereas P.W. 3, the police officer stated that at about 10.30 P.M. he received an information regarding altercation and dispute between the accused persons and the victim and her husband. The learned Magistrate also discussed the discrepancy in evidence between P.W. 1 and P.W. 2 as according to P.W. 1 the victim, Rama Goswami there was an attempt to rape on her whereas, P.W. 2 Sanjib Goswami, husband of P.W. 1 stated that his wife was raped. Evidence of P.W. 3 discloses nothing about incident of either attempt to rape or rape. It appears that the learned Magistrate placed much reliance over this discrepancy between the evidence of P.W. 1 and P.W. 2 and also observed that no independent witness was examined in the case. Learned Magistrate also discussed regarding discrepancy between First Information Report and evidence of P.W. 1 and P.W. 2 as in the First Information Report there was allegation that the victim was dragged by the accused persons and her blouse was torn. Accordingly, the learned Magistrate observed that the evidence as adduced is not sufficient to hold the accused person guilty and the evidence raises suspicion for doubt regarding commission of alleged offence by the accused. With such observation the learned Magistrate acquitted the accused opposite parties.

15. Perusing the materials I find that the learned Magistrate did not consider that it was not a case u/s 376 of Indian Penal Code or under Sections 376/511 of Indian Penal Code. Materials on record reveal that the accused persons were examined u/s 251 of the Code and substance of accusation under Sections 354/114 of the Indian

Penal Code were read over and explained to the accused persons. It was a case u/s 354 of Indian Penal Code and not a case u/s 376 of Indian Penal Code. The manner of discussion of evidence and the reasoning mentioned in the judgment of the learned Magistrate clearly indicate that the learned Magistrate proceeded in the matter taking the case as u/s 376 of the Indian Penal Code. It is manifestly clear that the learned Magistrate did not consider what are the essential ingredients to constitute an offence u/s 354 of Indian Penal Code. Learned Magistrate did not consider whether the evidence on record established elements of offence u/s 354 of Indian Penal Code. The learned Magistrate did not consider that even on the basis of sole or single witness, if found reliable by Court, conviction can be based. There was no discussion by the learned Magistrate whether the evidence of P.W. 1 and P.W. 2 are trustworthy or not.

16. Evidence of P.W. 3 reveals that on 15.4.2000 while he was on round duty at about 10.30 P.M. he received a message by wireless from A.S.I. A.K. Sarkar disclosing that a disturbance is going on at 15, Narkeldanga North Road. The learned Magistrate did not make any attempt to produce G.D. Entry concerning the message received by P.W. 3 S.I. M. Rahaman from ASI A. K. Sarkar. A police officer on duty at police station is bound to make entries in general diary regarding information received over an incident either orally or by phone. The other police officer namely A.S.I. A. K. Sarkar who sent the message to S.I. M. Rahaman was not examined. The investigation was not done properly by P.W. 3 and the investigation was perfunctory. The I.O. did not examine the persons whom he found at the gate of the house in question and did not try to ascertain by examining such persons or witnesses as to what was the cause of disturbance. The learned Magistrate exercising power u/s 311 of the Code could have called for the general diary and could have summoned the other police officer for examination in Court. If the learned Magistrate found that the investigation was not proper, he could have directed further investigation u/s 173(8) of the Code. Learned Magistrate could have directed further investigation to record statement of other witnesses and in this connection the decision in the Best Bakery case delivered by the Hon''ble Supreme Court in Zahira Habibullah v. State of Gujarat reported in 2004(3) Supreme 210 : 2004 AIR SCW 2325 is important in such a situation. In the said case the Supreme Court observed that, "In the case of a defective investigation the Court has to be circumspect in evaluating the evidence and may have to adopt an active and analytical role to ensure the truth is found by having recourse to Section 311 or at a later stage also resorting to Section 391 instead of throwing hands in the air in despair. It would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the Investigating Officer if the investigation is designedly defective." In the said case the Supreme Court observed that, "Since we have directed retrial it would be desirable to the investigating agency or those supervising the investigation to act in terms of Section 173(8) of the Code, as the circumstances seem to or may so warrant. The Director

General of Police, Gujarat is directed to monitor re-investigation, if any, to be taken up with the urgency and utmost sincerity, as the circumstances warrant."

17. The above discussion makes it clear that the learned Magistrate did not consider at all that the incident was on 15.4.2000 and the victim alleged outraging of her modesty by dragging her and torning her blouse but, in spite of such allegation of cognizable offence the police officer remained silent and did not start First Information Report. One First Information Report was started or registered on 12.5.2000 when the victim and her husband in the meantime approached higher police officers and the political parties. It clearly indicates that the investigation was not proper and the investigation was done with some designated manner to help the other side.

18. In a case u/s 354 of Indian Penal Code the learned Magistrate has to consider what are the ingredients or essential features to constitute offence under this section. In the matter of dispute between landlord and tenant possibility of exaggeration cannot be ruled out. In spite of that, the Court has a duty to find out the truth when the Court is proceeding with trial regarding allegation of offence u/s 354 of the Indian Penal Code. In order to constitute an offence u/s 354 of the Indian Penal Code there must be assault or use of criminal force to any woman with the intention or knowledge that the woman''s modesty will be outraged. Offence u/s 354 of Indian Penal Code is committed only when a person assaults or uses a criminal force to a woman intending to outrage or knowing it to be likely that he will thereby outrage her modesty. In order to bring home charge u/s 354 of Indian Penal Code the prosecution is to prove, (i) that the victim concerned belonged to fair sex - whatever age her may be, (ii) that the accused subjected her to assault as defined in Section 351 of the Indian Penal Code or to criminal force as defined in Section 350 of Indian Penal Code and (iii) the accused while committing assault or using criminal force intended to outrage the modesty of the woman of knowing it to be likely that thereby her modesty would be outraged. There may be an order of acquittal but, the judgment of learned Magistrate must disclose on discussion and consideration of evidence whether elements of the alleged charge have been established or not.

19. The learned Magistrate in his judgment did not consider at all whether these ingredients or elements of Section 354 of Indian Penal Code were established or not from the evidence of witnesses that were examined in the Court. Learned Magistrate only considered discrepancies regarding time of incident and the difference between evidence of P.W. 1 and P.W. 2 but, did not consider whether the evidence that came before the Court made out elements of offence u/s 354 of Indian Penal Code. Besides that, I have already discussed that the learned Magistrate did not call for the general diary from police station and did not summon the other police officer namely A.S.I. A. K. Sarkar who sent the message to S.I. M. Rahaman. The learned Magistrate did not exercise power u/s 311 of the Code to

summon other persons or other higher rank police officers to whom the victim made complaints and did not try to summon the complaints which the victim alleged to have submitted before the higher rank police officers to ascertain truth of her allegation in the matter.

20. The Supreme Court in Zahira Habibulla H. Sheikh and Anr. (supra) known as Best Bekary case observed that, "Section 311 of the Code and Section 165 of the Evidence Act confer vast and wide powers on Presiding Officers of Court to elicit all necessary materials by playing an active role in the evidence collecting process. They have to monitor the proceedings in aid of justice in a manner that something, which is not relevant, is not necessarily brought into record. Even if the prosecutor is remises in some ways, it can control the proceedings effectively so that ultimate objective i.e., truth is arrived at .... The power of the Court u/s 165 of the Evidence Act is in a way complementary to its power u/s 311 of the Code. The section consists of two parts i.e. (i) giving a discretion to the Court to examine the witness at any stage, and (ii) the mandatory portion which compels the Court to examine a witness if his evidence appears to be essential to the just decision of the Court. Though the discretion given to the Court is very wide, the very width requires a corresponding caution. The second part of the section does not allow any discretion but obligates and binds the Court to take necessary steps if the fresh evidence to be obtained is essential to the just decision of the case - ''essential'', to an active and alert mind and not to one which is bent to abandon or abdicate. Object of the section is to enable the Court to arrive at the truth irrespective of the fact that the prosecution or the defence has failed to produce some evidence which is necessary for a just and proper disposal of the case. The power is exercised and the evidence is examined neither to help the prosecution nor the defence, if the Court feels that there is necessity to act in terms of Section 311 but only to subserve the cause of justice and public interest. It is done with an object of getting the evidence in aid of a just decision and to uphold the truth.

21. Considering the judgment and the evidence I am of opinion that the learned Magistrate failed to exercise jurisdiction vested on him. The learned Magistrate did not consider at all whether the evidence that was adduced made out or established ingredients of Section 354 of Indian Penal Code. Learned Magistrate did not exercise power vested on him u/s 311 of the Code and u/s 165 of the Evidence Act to summon the other persons whose examination in Court would have reveal the truth. He also did not issue summons upon the higher police officers asking them to produce papers send by the victim, if any, making her allegation to them in order to find out truth. Court has a duty to exercise power u/s 311 of the Code and u/s 165 of the Evidence Act neither to help the prosecution nor the defence, but only to subserve the cause of justice and public interest and to uphold the truth. Therefore, it is a fit case in which interference by this Court is necessary for ends of Justice and the matter should be sent back on remand before the learned Trial Court for fresh decision in accordance with law in view of the indications made above. The learned

Magistrate, if required, shall allow the prosecution to re-examine the witnesses already examined and exercising power u/s 311 of the Code shall summon the other witnesses whose presence before him would reveal the truth. Accordingly, the judgment and order dated 18.5.01 passed by the learned judicial Magistrate, 5th Court, Sealdah in G.R. Case No. 1183/2000 is set aside. The case is sent back before the learned Trial Court for retrial in terms of the observations made hereinabove after giving an opportunity to the parties to act in accordance with the indications given in the body of the judgment. At the time of retrial if fresh papers or documents are produced by prosecution including complaints made by victim to higher rank officers, copies of such papers and documents should be supplied to the accused persons before starting recording of such evidence.

22. Learned Magistrate is directed to dispose of the trial expeditiously preferably within six months from the date of communication of the order in accordance with law.

23. Though a direction for retrial has been ordered the learned Magistrate shall come to his own decision after discussion of evidence on the basis of materials on record and shall not be influenced in any way by the observations of this Court.

Send down the lower Court records among with copy of this order to the learned Court below as expeditiously as possible.

Urgent xerox certified copy be given to the parties, if applied for, expeditiously.