



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 3RD DAY OF FEBRUARY, 2026

BEFORE

THE HON'BLE MR. JUSTICE M.NAGAPRASANNA

CRIMINAL PETITION NO. 16658 OF 2025



BETWEEN:

1. MR.RAVINDRA KUMAR
AGED ABOUT 22 YEARS
S/O PAWAN SAHANI,
RESIDING AT WARD NO.8,
SARACHIYA, MAHULI POS,
MURURGHAR, MANGALAPUR
SAMASTIPURA DISTRICT
BIHAR – 848 208.
2. MR.MANOJ KUMAR SAHANI
AGED ABOUT 22 YEARS
S/O VASUDEVA SAHANI,
RESIDING AT WARD NO.8,
NEAR DURGA TEMPLE
SARACHIYA, MAHULI POS,
MANGALGHAR, HASSANPUR
SAMASTIPURA DISTRICT
BIHAR – 848 208.

...PETITIONERS

(BY SRI VIKRAM RAJ A., ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
THROUGH SURATHKAL POLICE STATION,
DAKSHINA KANNADA DISTRICT





REPRESENTED BY
STATE PUBLIC PROSEUCTOR,
HIGH COURT BUILDING,
BENGALURU - 560 001.

2. SRI PAPPU SAHANI
AGED ABOUT 40 YEARS,
S/O RAJAN SAHANI
R/AT KOUNPURA THANA,
REBRA CHOWKI,
NEAR BHAJARANGA BALI MANDIRA,
UDAR GAT MAIN ROAD,
SAMASTIPUR, BIHAR - 848 101.

...RESPONDENTS

(BY SRI VINAY MAHADEVAIAH, HCGP FOR R-1)

THIS CRL.P IS FILED U/S 482 CR.P.C (U/S 528 BNSS)
PRAYING TO QUASH THE ORDER DATED 24.06.2025 PASSED
BY THE HON'BLE III ADDL.DISTRICT AND SESSIONS JUDGE,
DAKSHINA KANNADA MANGALURU IN SC NO.186/2023 FOR
THE OFFENCES P/U/S 504, 323, 324, 326, 307, 302 R/W
SECTION 34 OF IPC REGISTERED IN PURSUANCE OF CRIME
NO.14/2023 OF SURATHKAL POLICE STATION, REJECTING THE
APPLICATION DATED 24.06.2025 FILED BY THE PETITIONER
U/S 231(2) OF THE CODE OF CRIMINAL PROCEDURE 1973,
PRAYING TO DEFER THE CROSS EXAMINATION OF CW 1 TO 8
UNTIL ALL OF THEM ARE EXAMINED IN THE CHIEF AND
CONSEQUENTLY PERMIT THE PETITIONER IN CHIEF.



THIS PETITION, COMING ON FOR ADMISSION, THIS DAY,
ORDER WAS MADE THEREIN AS UNDER:

CORAM: **HON'BLE MR. JUSTICE M.NAGAPRASANNA**

ORAL ORDER

The petitioners/accused Nos.1 and 2 in SC.No.186/2023 have invoked the inherent jurisdiction of this Court under Section 482 of the Code of Criminal Procedure, 1973 ('the Cr.P.C. for short) calling in question the legality and propriety of the order dated 24.06.2025 passed by the III Additional District & Sessions Judge, D.K. District, Mangaluru. By the said order, the learned Sessions Judge declined to exercise discretion under Section 231(2) of the Cr.P.C. and rejected the prayer of the accused seeking deferment of cross-examination of CW1 to CW8 until completion of their examination-in-chief.

2. Heard Sri. Vikram Raj A., learned counsel appearing for the petitioners and Sri. Vinay Mahadevaiah, learned High Court Government Pleader appearing for respondent No.1.



3. Facts in brief germane are as follows:

The petitioners get embroiled in a crime in Crime No.14/2023 for the offences punishable under Sections 504, 323, 324, 326, 307 and 302 read with 34 of the Indian Penal Code, 1860 ('the IPC' for short). The Police conduct investigation and file a charge sheet. The matter is committed to the Court of Session and is pending before the concerned Court as SC.No.186/2023. The issue in the *lis* does not pertain to the merit of the matter before the concerned Court. On 24.06.2025, summons were issued to the witnesses. CW-1 was present and examined as PW-1 and several documents are marked. The petitioners then filed application under Section 231(2) of the Cr.P.C. seeking to defer cross-examination of CW-1 to CW-8 on the score that CW-1 to CW-5 are relatives, CW-6 to CW-8 are neighbours. If cross-examination is done before the examination-in-chief of all the sighted witnesses, it would become premature disclosure of defence, which would prejudice the accused, this was opposed by the State. The concerned Court rejects the application on the score that no prejudice would be caused to these petitioners. It is this



approach of the Trial Court that has necessitated the present petition.

4. The learned counsel appearing for the petitioners would reiterate the grounds urged in the petition contending that all CW-1 to CW-8 are eyewitnesses. They would all be deposing identical. If cross-examination of CW-1 is directed to be done immediately, it would undoubtedly cause prejudice to the case of the petitioners, as it would amount to disclosure of the defence. He would submit that the concerned Court ought to have allowed the application.

5. The learned High Court Government Pleader appearing for the State would though initially oppose the petition would leave the decision to the hands of the Court.

6. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the available material on record.

7. The afore-narrated facts lie in a narrow compass at this juncture. The petitioners are alleged of the offence punishable under Sections 504, 323, 324, 326, 307 and 302 of the IPC.



The offences are grave in nature. Summons were issued to the witnesses and CW-1 was present and examined as PW-1 on 24.06.2025. Immediately thereafter, springs the application under Section 231(2) of the Cr.P.C. seeking deferment of cross-examination of PW-1, this is rejected by the concerned Court by the following order:

"A/c filed appln U/s 231(2) of Cr.PC to defer cross examination of CW1 to 8 on the reason that CW1 to 8 are cited as Eye witnesses and CW1 to 5 are relatives and CW6 to 8 are neighbours. If cross examination is done before the chief examination of above witnesses, there is possibility of premature disclosure of defence which will prejudice the accused and prays to allow the application.

Ld.PP filed objections submitting that, CW1 is the first informant and CW3 is the Eye witness and spot Mahazar witness, CW2,4 to 8 are the Eye witnesses. CW1 has already been examined in chief. Further, it is left to the prosecution to summon and examine any witness from CW2 to 8 and CW1 to 5 are from Bihar State and at a time cross examining them will be difficult and requires lot of time and contention of the accused counsel that, CW1 to 8 would depose in the same manner is contrary to the documents and prays to dismiss the application.

As seen, today PW1 is present before this Court on issuance of bailable warrant. Further, PW1 and CW2 to 5 are from Bihar State and as stated by the Ld.PP, deferring cross examination of PW1, till the examination of CW2 to 8 would require lot of time and securing them is a difficult task. Further, it will give an opportunity for threatening the witness and tampering the evidence and merely the witnesses being relatives and neighbours, would not prejudice the accused. Hence application is hereby rejected.



A/c prays time for cross examination.

As no sufficient ground shown, cross examination of PW1 taken as nil.

Issue SS to CW2 and 3 by 05.08.2025.

Ld. PP present.

A/c present.

AI and 2 are present.

CW2 and 3 are present and examined as PW2 and 3. Ex.P3 to 5 and MO-7 to 10 got marked. PW2 turned partly hostile and cross examined by Ld.PP.

A/c prays time for cross examination. As no sufficient ground shown for adjournment, prayer rejected and cross of PW2 and 3 taken as nil.

Issue SS to CW4 and 5 by 28.10.2025."

The concerned Court holds no sufficient ground is shown to defer the cross-examination of PW-1 and closes the cross-examination. It is the aforesaid order that has driven the petitioner to this Court in the subject petition. It therefore becomes necessary to consider whether the petitioners were entitled to deferment of cross-examination on the circumstances narrated in the application.

8. To consider the said issue, it is germane to notice Section 231(2) of the Cr.P.C., invoking which the application is filed. It reads as follows:



231. Evidence for prosecution:-

(2) The Judge may, in his discretion, permit the cross-examination of any witness to be deferred until any other witness or witnesses have been examined or recall any witness for further cross-examination.

(Emphasis supplied)

Section 231(2) of the Cr.P.C. vests a judicial discretion in the Trial Court to defer cross-examination of a witness where circumstances so warrant. **The provision is not ornamental, it is purposive. It is a statutory recognition of the principle that fairness of trial is not merely a procedural formality, but a substantive guarantee flowing from Article 21 of the Constitution of India.**

9. The contours of discretion under Section 231(2) of the Cr.P.C. are no longer *res integra*. The Hon'ble Supreme Court in the case of **STATE OF KERALA v. RASHEED¹** has lucidly expounded that while no straight jacket formula governs the exercise of power under Section 231(2) of the Cr.P.C., the determinative consideration is whether refusal of deferment would

¹(2019) 13 SCC 297



occasion prejudice to the accused. The Apex Court in the case of **STATE OF KERALA** (*supra*), holds as follows:

"....

21. The Delhi High Court, in *Vijay Kumar v. State (NCT of Delhi)* [*Vijay Kumar v. State (NCT of Delhi)*, 2017 SCC OnLine Del 9012 : 2017 Cri LJ 3875] , laid down useful directions for the conduct of criminal trials. The directions are commendable, and relevant excerpts are reproduced hereinbelow: (SCC OnLine Del para 42)

"42. ... (vi) Since the expectation of law is that the trial, once it commences, would continue from day to day till it is concluded, it is desirable that, keeping in mind the possible time required for recording of evidence (particularly of the prosecution), a detailed schedule of the dates of hearing on which evidence would be recorded is drawn up immediately after charge is framed — this, taking into account not only the calendar of the court but also the time required by the prosecution to muster and secure the presence of its witnesses as well as the convenience of the defence counsel. Once such a schedule has been drawn up, all sides would be duty-bound to adhere to it scrupulously.

(vii) While drawing up the schedule of dates for recording of the evidence for the prosecution, as indicated above, the presiding Judge would take advice from the prosecution as to the order in which it would like to examine its witnesses, clubbing witnesses pertaining to the same facts or events together, for the same set of dates.

(viii) If the defence intends to invoke the jurisdiction of the criminal court to exercise the discretion for deferment of cross-examination of particular witness(es) in terms of Section 231(2), or Section 242(3) CrPC, it must inform the presiding Judge at the stage of setting the schedule so that the order in which the witnesses



are to be called can be appropriately determined, facilitating short deferment for cross-examination (when necessary) so that the recording of evidence continues, from day to day, unhindered avoiding prolonged adjournments as are often seen to be misused to unduly influence or intimidate the witnesses.

(ix) It is the bounden duty of the presiding Judge of the criminal court to take appropriate measures, if the situation so demands, to insulate the witnesses from undue influence or intimidatory tactics or harassment. If the court has permitted deferment in terms of Section 231(2), or 242(3) CrPC, for cross-examination of a particular witness, it would not mean that such cross-examination is to be indefinitely postponed or scheduled for too distant a date. The court shall ensure that the deferred cross-examination is carried out in the then ongoing schedule immediately after the witness whose examination ahead of such exercise has been prayed for."

22. There cannot be a straitjacket formula providing for the grounds on which judicial discretion under Section 231(2) CrPC can be exercised. The exercise of discretion has to take place on a case-to-case basis. The guiding principle for a Judge under Section 231(2) CrPC is to ascertain whether prejudice would be caused to the party seeking deferral, if the application is dismissed.

23. While deciding an application under Section 231(2) CrPC, a balance must be struck between the rights of the accused, and the prerogative of the prosecution to lead evidence. The following factors must be kept in consideration:

(i) possibility of undue influence on witness(es);

(ii) possibility of threats to witness(es);

(iii) possibility that non-deferral would enable subsequent witnesses giving evidence on similar



facts to tailor their testimony to circumvent the defence strategy;

(iv) possibility of loss of memory of the witness(es) whose examination-in-chief has been completed;

(v) occurrence of delay in the trial, and the non-availability of witnesses, if deferral is allowed, in view of Section 309(1) CrPC [“309. *Power to postpone or adjourn proceedings*.—(1) In every inquiry or trial the proceedings shall be continued from day to day until all the witnesses in attendance have been examined, unless the court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded:” See also *Vinod Kumar v. State of Punjab*, (2015) 3 SCC 220 : (2015) 2 SCC (Cri) 226 : (2015) 1 SCC (L&S) 712; and *S.J. Chaudhary v. State (UT of Delhi)*, (1984) 1 SCC 722 : 1984 SCC (Cri) 163.] .

These factors are illustrative for guiding the exercise of discretion by a Judge under Section 231(2) CrPC.

24. The following practice guidelines should be followed by trial courts in the conduct of a criminal trial, as far as possible:

24.1. A detailed case-calendar must be prepared at the commencement of the trial after framing of charges.

24.2. The case-calendar must specify the dates on which the examination-in-chief and cross-examination (if required) of witnesses is to be conducted.

24.3. The case-calendar must keep in view the proposed order of production of witnesses by parties, expected time required for examination of witnesses, availability of witnesses at the relevant time, and convenience of both the prosecution as well as the defence, as far as possible.

24.4. Testimony of witnesses deposing on the same subject-matter must be proximately scheduled.



24.5. The request for deferral under Section 231(2) CrPC must be preferably made before the preparation of the case-calendar.

24.6. The grant for request of deferral must be premised on sufficient reasons justifying the deferral of cross-examination of each witness, or set of witnesses.

24.7. While granting a request for deferral of cross-examination of any witness, the trial courts must specify a proximate date for the cross-examination of that witness, after the examination-in-chief of such witness(es) as has been prayed for.

24.8. The case-calendar, prepared in accordance with the above guidelines, must be followed strictly, unless departure from the same becomes absolutely necessary.

24.9. In cases where trial courts have granted a request for deferral, necessary steps must be taken to safeguard witnesses from being subjected to undue influence, harassment or intimidation."

(Emphasis supplied)

The Apex Court underscores that in cases involving multiple witnesses deposing on the same set of facts, premature exposure of the defence strategy may enable subsequent witnesses to tailor their testimony, thereby imperilling them the fairness of trial.



10. The High Court of Calcutta in the case of **MOHITOSH BISWAS v. STATE OF WEST BENGAL**², holds as follows:

" "

12. Before proceeding to decide the issue it is necessary to consider the provisions contained in section 231 of the Code of Criminal Procedure 1973. Section-231- of Code of Criminal Procedure provides as follows:

231. Evidence for prosecution.

- 1) on the date so fixed the judge shall proceed to take all such evidence as may be produced in support of the prosecution.
- 2) The judge may in his discretion permit the cross examination of any other witness or witnesses to be deferred until any other witness or witnesses have been examined or recall any witness for further cross-examination.

13. In the case of *Sunita Devi* (supra) the Hon'ble Supreme Court observed as follows:

'22. These two provisions are to be read in consonance with each other. At this stage, the Court is concerned only with the prosecution's evidence. To ensure fair play, as a normal practice, the Court has to fix a date for the examination of the witnesses. The idea is to complete the examination-in-chief and cross examination, both at the same time. While fixing the date, the Court is expected to take into consideration the relative convenience of the parties, though the discretion lies with it. Sub-section (1) of Section 231 of the CrPC,

²2024 SCC OnLine Cal 9110



1973 fixes a responsibility on the Court, the prosecution and the defence to go ahead with the examination of witnesses on the date so fixed. Therefore, even for this reason, the Court shall ascertain and then decide a convenient date for both sides, while being conscious about any attempt to drag the trial. Completion of such examination is a matter of rule as any deferment can at best be an exception, to the discretion of the Court. **Obviously, the use of such a discretion, being judicial in nature, has to be on a case-to-case basis. Suffice it is to state that a balance has to be struck between the competing interests.**

14. *State of Kerala v. Rasheed*, (2019) 13 SCC 297

"22. There cannot be a straitjacket formula providing for the grounds on which judicial discretion under Section 231(2) CrPC can be exercised. The exercise of discretion has to take place on a case-to-case basis. The guiding principle for a Judge under Section 231(2) CrPC is to ascertain whether prejudice would be caused to the party seeking deferral, if the application is dismissed.

23. While deciding an application under Section 231(2) CrPC, a balance must be struck between the rights of the accused, and the prerogative of the prosecution to lead evidence. The following factors must be kept in consideration:

- i) possibility of undue influence on witness(es);**
- (ii) possibility of threats to witness(es);**
- (iii) possibility that non-deferral would enable subsequent witnesses giving evidence on similar facts to tailor their testimony to circumvent the defence strategy;**



- (iv) possibility of loss of memory of the witness(es) whose examination-in-chief has been completed;
- (v) occurrence of delay in the trial, and the non-availability of witnesses, if deferral is allowed, in view of Section 309(1) CrPC.'

15. Upon perusing section 231(2) CrPC it appears that discretionary power is given to the Court to permit the cross examination of any witness to be deferred which is to be decided on the facts of every case. The Hon'ble Supreme Court in the case of *State of Kerala v. Rashid* (supra) has laid down the guidelines to be followed with regard to different cases and the discretion has to be on a case to case basis. While disposing application under Section 231(2) CrPC, all the above factors should be taken into consideration and not a particular factor.

16. In the order passed by Learned Trial Judge dated 24/04/2024 it appears that the Learned Court has considered the delay aspect and have ignored the other aspects about the defence being disclosed or the accused being prejudiced.

17. The Hon'ble Supreme Court in the case of *J. Jayalittaa v. State*, (2014) 2 SCC 401 observed that Fair Trial is the main object of criminal procedure and such fairness should not be hampered or threatened in any manner. Fair Trial entails the interest of the accused, the victim and of the society. Thus fair Trial must be accorded to every accused in the spirit of the right to life and personal liberty and the accused must get a free and fair, just and reasonable trial on the charge imputed in a criminal case.'

18. As an accused person should get a reasonable opportunity to defend himself it must be seen whether by disclosing the defence the reasonable opportunity of defence is curtailed or extinguished, or whether the prosecution in such circumstance of disclosure of defence is getting opportunity to fill up the lacuna in the case.



19. In the event two views are available as to whether defence of the accused is disclosed to the prejudice of the accused the accused should be given the benefit and cross-examination should be deferred. However the Courts should also see that trial is not unnecessarily delayed and hence should fix the dates of evidence accordingly. In the instant case upon perusing the order passed by the Learned Trial Court and considering the facts of the case this Court is of the view that the Learned Defence Advocate has given a reasonable ground to defer the cross examination of P.W.1 till completion of Examination in chief of P.W. 2 and P.W.-3."

(Emphasis supplied)

11. The High Court of Jammu and Kashmir in the case of **RAVINDER KUMAR v. UT OF J&K³**, holds as follows:

"....

14. The Apex Court in *Rasheed*, had an occasion to analyse the import and legislative intent of Section 231(2) Cr. P.C., corresponding to Section 254(3) BNNS, and it was clearly ruled that there cannot be a straightjacket formula providing for the grounds for exercise of judicial discretion and it depends upon case to case. Pertinently, it was observed that the guiding principle, in such cases, for a Court is to ascertain whether dismissal of application for deferral of cross examination would result in prejudice to the parties seeking deferral and delineated the following factors for consideration:

- i. possibility of undue influence on witness(es);
- ii. possibility of threats to witness(es);
- iii. **possibility that non-deferral would enable subsequent witnesses giving evidence on**

³2025 SCC OnLine J&K465



similar facts to tailor their testimony to circumvent the defence strategy;

- iv. possibility of loss of memory of the witness(es) whose examination-in-chief has been completed; and
- v. Occurrence of delay in the trial, and the non-availability of witnesses, if deferral is allowed, in view of Section 309(1) Cr. P.C.

(Emphasis supplied)

15. Having regard to the aforesaid factors, Supreme Court expounded following guidelines, to be followed by the courts in the conduct of a criminal trial:

"24. The following practice guidelines should be followed by trial courts in the conduct of a criminal trial, **as far as possible**:

24.1. A detailed case calendar must be prepared at the commencement of the trial after framing of charges;

24.2. The case-calendar must specify the dates on which the examination-in-chief and cross-examination (if required) of witnesses is to be conducted;

24.3. The case-calendar must keep in view the proposed order of production of witnesses by parties, expected time required for examination of witnesses, availability of witnesses at the relevant time, and convenience of both the prosecution as well as the defence, as far as possible;

24.4. Testimony of witnesses deposing on the same subject matter must be proximately scheduled;

24.5. The request for deferral under Section 231(2) of the Cr. P.C. must



be **preferably** made before the preparation of the case calendar;

24.6. The grant for request of deferral must be premised on sufficient reasons justifying the deferral of cross - examination of each witness, or set of witnesses;

24.7. While granting a request for deferral of cross examination of any witness, the trial courts must specify a proximate date for the cross examination of that witness, after the examination in chief of such witness(es) as has been prayed for;

24.8. The case-calendar, prepared in accordance with the above guidelines, must be followed strictly, unless departure from the same becomes absolutely necessary; and

24.9. In cases where trial courts have granted a request for deferral, necessary steps must be taken to safeguard witnesses from being subjected to undue influence, harassment or intimidation."

(Highlighted to emphasize)

16. Learned trial Court considered the application preferred by the petitioners in the light of aforesaid guidelines, in particular, guideline 24.5 and rejected the application, on the ground that since the application was preferred by the petitioners after the examination in chief of PW1-Jagir Singh was completed and not, at the very outset, when the calendar for examination of witnesses was drawn, so the application did not meet the first requirement.

17. It needs a specific mention that guidelines provided by Hon'ble Supreme Court in *Rasheed* commenced with the expression "**as far as possible**" and guideline 24.5 provides that request for deferral must "**preferably**" be made before the preparation of the case calendar. If paragraph 24 of **Rasheed** is carefully glanced over and guideline 24.5 is read in conjunction with the opening



expression "**as far as possible**", I find legal force in the argument of Mr. Sakal, learned counsel for the petitioners that it does not lay down in absolute terms that an application for deferring cross examination of a witness should necessarily be filed before the preparation of the case calendar. Learned trial Court, by overlooking the aforesaid expressions, has misdirected itself, to conclude that the application for deferment of prosecution witnesses must be preferred by the accused, at the outset, when calendar for examination of witnesses was drawn. The logical requirement is that such an application for deferring cross examination of a witness or witnesses, on the same set of facts, must be made before the commencement of the cross examination of a particular witness. **In other words an application for deferment of cross examination of a witness or set of witnesses must be filed, as early as possible, but, in any case, before the commencement of cross examination of a witness, otherwise once the defence strategy is exposed, the object of deferral of cross examination pales into insignificance. The petitioners, in the present case, preferred the application for deferral of cross-examination of eye witnesses, to the same set of facts, at the earliest available opportunity and before the defence strategy would become known to the prosecution.**

18. Mr. Kotwal, learned Special PP for the respondent has argued that trial Court, in terms of sub section 3 of Section 254 BNSS, is vested with the discretion to defer cross examination of a witness only and wholesale deferment of six prosecution witnesses is not permitted in law. He has relied upon *Md. Sanjoy* (supra) to support his contention.

19. Guideline 24.6 of Rasheed is a complete answer to the issue raised by learned Special PP, which provides that deferral of cross examination of a witness or set of witnesses, shall be justified, provided it is premised on sufficient reasons. The expression "each witness or set of witnesses" in guideline 24.6 is sufficient to indicate that Court, under Sub Section 3 of Section 254 BNSS is vested with the jurisdiction to permit the deferment of cross examination, not only of a witness but a set of



witnesses and it depends upon case to case justifying the deferral of cross examination. Therefore, observation of learned trial Court that *en masse* or wholesale deferment of six eye witnesses, is not permissible in law, is also not sustainable.

20. Learned trial Court is of the view that Court cannot assume and presume a hypothetical situation in advance that witness will get a chance to improve upon their testimonies. Be it noted, that **one of the factors, to be kept in mind by the Courts to justify the deferral of cross examination of a witness or set of witnesses, underscored by the Apex Court in *Rasheed*, is "possibility that non-deferral would enable subsequent witnesses giving evidence on similar facts to tailor their testimony to circumvent the defence strategy."** It is evident from the expression "possibility" in para 23(iii) of judgment that such an application for deferral of cross examination of a witness or witnesses, on same set of facts, can be premised on a presumption or apprehension.

21. Case of the petitioner is that PWs 1, 2, 3, 5, 7, and 8, are not only related but cited as eye witnesses by the prosecution, to the same set of facts alleged in the challan. In the circumstances, the apprehension of the petitioners accused that their non-deferral can enable subsequent witnesses, testifying on similar facts to circumvent the defence strategy, is well founded and the possibility of the prosecution to tailor their testimony to the prejudice of the petitioners, cannot be ruled out.

22. In a similar fact situation, Bombay High Court, followed *Rasheed*, in *Nannebabu Ramdev Gupta* (supra) to observe that if the defence is made open, during cross examination of the complainant, then there is possibility that lacunae would be filled in by the prosecution through other witnesses who are close relatives of the complainant. It was held that these circumstances justified the exercise of discretion of deferring cross examination of related witnesses and there will be no prejudice to the prosecution. Relevant excerpt of the judgment reads as:



"11..... it cannot be said that the apprehension expressed by the applicant is unfounded. If his defence is made open while cross-examining PW 1/complainant, then the lacunae would be filled in by the prosecution through the other three witnesses who are her father, mother and a close relative, interested in the version of the complainant.

12 The circumstances narrated, therefore, would justify the exercise of discretion in sub-section (2) of Section 231, which is a tool available to the defence to defer the cross-examination of the prosecution witnesses until other witnesses are examined, as it would lead to making the defence open, while the first witness of the prosecution itself is examined and the contingency which would specifically fall within one of the consideration as laid down by Apex Court in State of Kerala v. Rasheed (supra), for exercising the discretion under sub-section (2) of Section 231.

In any case, no prejudice would be caused to the prosecution if the cross-examination of PW 1 (complainant) is deferred till the examination-in-chief of the above mentioned three witnesses is concluded, so as to avoid the prosecution filling up the lacunae in its case, as may be disclosed by PW 1 or the subsequent witnesses related to her."

23. High Court of Calcutta also relied upon *Rasheed* in *Mohitosh Biswas* (supra), and held that if two views are available that whether defence of the accused will be disclosed to his prejudice, he would be given the benefit and cross examination should be deferred. Relevant observation reads as below:

"In the event two views are available as to whether defence of the accused is



disclosed to the prejudice of the accused should be given the benefit and cross examination should be deferred.....”

24. True it is, that prosecution witnesses are expected to testify in their chief examination on the lines of their statements recorded, during investigation, under Sections 161 or 164 Cr. P.C., and any improvement or deviation by them from said statements, may render their depositions unworthy of credence. However, **it is the apprehension of improvisation by the prosecution witnesses in their cross examinations to circumvent the defence strategy which is to be taken into consideration by the Court at the time cross examination of a witness or set of witnesses is sought to be deferred and if that apprehension is well founded, it can hamper the prospects of a fair trial, a basic postulate of criminal jurisprudence. The circumstances narrated by the petitioners, in the present case, justified the exercise of discretion by the Court, in terms of sub section 3 of Section 254 BNSS.**

25. If the principle of law expounded by Hon'ble Supreme Court in *Rasheed*, is carefully glanced over, it is manifest that, as far as possible, a plea for deferral under Section 254(3) BNSS, must preferably be made before the preparation of the case calendar or at the earliest available opportunity, before the defence strategy would become known to the prosecution. A request for deferral must be premised on sufficient reasons and prejudice is the determining factor, to be borne in mind.”

(Emphasis supplied)

The High Courts of Kerala, Calcutta and Jammu and Kashmir have echoed this salutary principle, **consistently holding that where two views are possible, the one that safeguards the right of the accused to a fair trial must**



prevail. The jurisprudential thread running through these decisions is unmistakable: **A criminal trial is not a contest of endurance, but a quest for truth conducted within the bounds of fairness.**

12. **Tested on this anvil, the impugned order cannot be sustained. The learned Sessions Judge has proceeded on conjectural apprehensions of delay and witness intimidation while altogether overlooking a fundamental question whether denial of deferment would prejudice the defence. The reasoning is cursory, discretion mechanical and the approach antithetical to the settled law governing Section 231(2) of the Cr.P.C.**

13. In the present case, **several witnesses are cited as eyewitnesses to the same incident and are closely related and proximally placed, the apprehension of the accused that early cross-examination would lay bare their defence cannot be brushed aside as fanciful. Such apprehension is not only plausible, but judicially recognized.** In the light of the fact that all the witnesses CW-1 to CW-8 had tendered identical statements under Section 161



of the Cr.P.C., at the time of investigation. This Court therefore, is constrained to hold that the order dated 24.06.2025 suffers from manifest error of jurisdiction and failure to exercise discretion in accordance with law. The rejection of the application under Section 231(2) of the Cr.P.C. has resulted in serious prejudice to the petitioners and has the potential to undermine the fairness of the trial itself.

14. For the aforesaid reasons, the following:

ORDER

- (i) Criminal petition is ***allowed.***
- (ii) The order dated 24.06.2025 passed by the III Additional District and Sessions Judge, Dakshina Kannada, Mangaluru in SC.No.186/2023 stands quashed.
- (iii) The application filed by these petitioners under Section 231(2) of the Cr.P.C. stands allowed.
- (iv) The cross examination of CW-1(PW-1) shall stand deferred until the completion of examination-in-chief of remaining witnesses.
- (v) The learned trial Judge shall regulate the further conduct of the trial in a manner



consistent with the principles laid down by the Apex Court, ensuring expedition without sacrificing fairness.

- (vi) The Court shall regulate its procedure in terms of the observation made in the course of the order.

Sd/-
(M.NAGAPRASANNA)
JUDGE

JY
List No.: 1 Sl No.: 5