

IN THE HIGH COURT OF DELHI

+ CrI.M.C. No. 1917/2009

Date of decision: 10th September, 2009

Manoj Kumar Rai ... Petitioner
through: Mr. Mukesh Kr. Verma, Adv.

VERSUS

Govt. of NCT of Delhi Respondents
through: Ms. Jaishree, Adv. for the complainant.
Mr. Manoj Ohri, APP for the State with Insp. Iqbal
Mohammad and SI Suresh Chand.

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

1. Whether reporters of local papers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

GITA MITTAL, J(Oral)

1. By this petition under section 482 of the CrPC, the petitioner Manoj Kumar Rai has prayed for one opportunity to cross examine PW 15 Sh. Kamal Kishan Dev. It has been submitted by learned counsel for the petitioner that PW 15 had appeared as a witness firstly on the 11th March, 2008. In his testimony on this date, he has produced a photocopy of the complaint dated 13th May, 2007 lodged by him with the commissioner of police for the first time. For the reason that this was not an original document as it was not exhibited and only

marked as Mark B-1 for identification purposes by the learned trial Judge.

2. The contention of the petitioner is that this document was not part of the documents relied on by the prosecution in support of the case and was not filed alongwith the charge sheet. Under the orders of the court, on the 11th of March, 2008, a photocopy of the document was directed to be served on him. The submission is for the reason that the document was only a photocopy and was not primary evidence, consequently no effective cross examination thereof was conducted on behalf of the petitioner.

3. It is further submitted that after the examination of PW 15 was complete and he was under cross examination, the prosecution had moved an application seeking further re-examination of PW 15. This application was allowed by the learned trial judge by an order passed on 1st November, 2008. Inasmuch as the court had permitted re-examination whereas the prosecution was seeking further examination in chief of the witness, this order had been assailed by way of CrI.M.C.No. 3630/2008 entitled Manoj Kumar Rai vs. State in this court. This petition was allowed by an order passed on 20th January, 2009 whereby it was clarified that the re-examination of PW 15 would take place after conclusion of his cross examination.

4. PW 15 appears to have been cross examined on 17th and 18th April, 2009 on behalf of the accused persons including the petitioner. Thereafter the witness was re-examined on behalf of the prosecution.
5. The statement in re-examination on 18th of April, 2009 made by this witness is brief and may be considered in extenso :-

“Re-examination by Ld. APP for State in compliance to the orders of the Hon'ble High Court dated 20.1.09

The complaint dated 13.5.07, which was addressed to the then Commissioner of Police duly received in his office is Ex.PW 15/X running into 8 pages, bears my signatures at point A as well as of my wife at point B. Copy was to ACP, National Human Rights Commission and National Women's Commission and the same was received with P.S. Dabri.”

6. On the same date, a request was made on behalf of the petitioner that he may be permitted to further cross examine the witness in the light of his re-examination. The same was rejected by the Additional Sessions judge on the ground that the petitioner had extensively cross examined the witness on the complaint which was marked on 18th April, 2009 and that the only addition in the re-examination was that the complaint was exhibited on record. For this reason, the prayer for further cross examination was denied to the petitioner.
7. Mr. Manoj Ohri, learned APP for the state and Ms. Jaishree, learned counsel representing the complainant (who appeared as PW

15) have extensively opposed the grant of any further opportunity to the petitioner to cross examine the witness. My attention has been drawn by them to the several observations of the learned Additional Sessions Judge in the order dated 17th April, 2009 and 18th April, 2009 which would suggest that the learned counsel appearing for the petitioner was trying his utmost to protract the trial.

8. Learned counsel for the petitioner on the other hand has contended that the same does not reflect the correct position inasmuch as no effort has been made at all to delay or protract the trial and that out of the total of 23 witnesses, deposition of 16 witnesses was completed without any kind of comments against the same counsel. It has also been submitted that in view of the difficulty being faced, during the course of trial, the petitioner was constrained to seek transfer of the trial to another court by way of CrI.Application No. 104/2009 and that by an order passed on 7th July, 2009, the learned District Judge has directed withdrawal of the case from the court of the Additional Sessions Judge before whom it was listed on 17th and 18th April, 2009, and has transferred/assigned the same to another learned trial judge.

9. It has further been submitted that prior to the re-examination of the witness conducted on 18th April, 2009, the document had not been

proved on record. It is submitted that this complaint contains allegations which were never made to either the SDM in the first statement recorded during the inquest proceedings or in the statement under section 161 of the CrPC or in the deposition recorded by the court in chief of this witness. No effective cross examination with regard to the allegations made in the complaint was conducted as the complaint was not substantive evidence and for this reason there was no need on behalf of the petitioner to do so. It is urged that valuable rights of the petitioner are involved and the allegations made in the complaint are of an extremely serious nature and the defence of the petitioner shall be irreparably damaged if he is not given an opportunity to cross examine the same.

10. On a consideration of the entire matter, though there are isolated questions put to the witness with regard to the complaint and a blanket suggestion made to him in his prior cross examination on 17th and 18th April, 2009, however it remains a fact that this document was not exhibited on record and was not part of substantive evidence till his re-examination by the state after the cross examination was over. I therefore, find substance in the application's contention that his defence shall be irreparably jeopardised and impacted if he is not given one opportunity to cross examine the witness. Interests of

justices merit that a fair opportunity is given to the petitioner to cross examine the witness.

Be that as it may, however I find that the witness has been extensively cross examined and certain observations on the record of the trial court with regard to efforts to delay the completion of the testimony of the witness have been made. Therefore, in the interest of justice, it is directed that the petitioner shall be given one opportunity on the next date of hearing.

11. I am informed by learned counsel for the petitioner as well as the complainant that the matter is now listed for 1st October, 2009. It is submitted by the learned counsel for the complainant that the witness shall be coming to the court on the next date of hearing.

This petition is accordingly allowed in the following terms :-

PW 15 Shri K.K. Deb shall be tendered for his further cross examination on behalf of the defence on the next date of hearing. It shall be ensured that opportunity is given that the cross examination is completed within a reasonable period.

This petition is allowed in the above terms.

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Gita Mittal, J.

September 10, 2009

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