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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ Crl. MC 3620/2011 & Crl. MA 12920/2011 (stay)

C.K. Chopra

..... Petitioner

Through: Mr. G.P. Thareja, Advocate and Mr.
Dharmish Chopra, Advocates

versus

STATE

..... Respondent

Through: Ms. Jasbir Kaur, APP for State

CORAM:

HON'BLE MR. JUSTICE M.L. MEHTA

ORDER

% **21.11.2011**

By way of instant petition under Section 482 read with Section 311 Cr.P.C, the petitioner has assailed the order dated 19.10.2011 passed by learned District Judge, New Delhi whereby an application under Section 311 Cr.P.C moved by the petitioner for recalling the witnesses of the petitioner herein was dismissed.

Heard the learned counsel for the parties and perused the record.

The application under Section 311 CrPC was filed by the petitioner for recalling PW4 Dr. N.K. Aggarwal (Sr. Scientific Officer, FSL), PW14 Dr. A.R. Arora (Sr. Scientific Officer), PW16 C.P. Sharma (retired District Excise Officer). Vide the impugned order, the said application of the petitioner was dismissed. The impugned order has been assailed vide the instant petition. The request for recalling PW16 C.P. Sharma was not pressed in the present petition. With regard to recalling PW4 and PW14, the learned counsel for the petitioner submitted that after the evidence of PW15, PW16 and PW19, the facts and circumstances started hinting towards the probability of homicide being passed on suicide. He submitted that new facts which have emerged on record are giving rise to new dimension to the case and it is essential to ascertain the truth and the same can be proved by recalling these witnesses. It is also submitted

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that they have consulted other handwriting experts and it has come to the knowledge of the petitioner that the report given by PW4 was misleading and not fair. With regard to recalling of PW14, it was submitted that his report Ex.PW14/A was not in detail and left various essential information inasmuch as the witness had not submitted the photographs taken by him while conducting test and had also not produced the process sheet prepared by him.

The reasons for recalling the witnesses as noted above were also submitted before the learned District Judge who vide his impugned order did not find any merit therein and also recorded that PW4 was examined way back on 25.9.2009 and PW14 on 2.2.2010.

Having heard the learned counsel for the petitioner as well as the learned APP for the State and gone through the record, I am outrightly of the view that the application filed by the petitioner for recalling PW4, PW14 and PW16 was a frivolous one. PW4 as an expert had examined the questioned documents by comparing the same with admitted one and had given his report based on his findings. He was cross examined by the learned counsel for the petitioner at length. I have gone through the examination in chief and cross examination of this witness but I did not see anything stated by him with regard to the facts of the case. Merely by consulting some private handwriting expert, the petitioner could not decide that the report of PW4 was misleading and not fair. It was for the court to appreciate the evidentiary value of the report and the statement of PW4.

With regard to PW14 also, it may be noted that this witness was also cross examined by learned counsel for the petitioner at length. This witness had stated and maintained about his having tested the barrel and gunshot. He had maintained that the fire arm was in working order and had been fired through, which means that the barrel was also tested, though it was not specifically mentioned in his report that the barrel test was also done. He had taken the photographs which were also brought by him at the time of his examination. Neither any request was made by learned counsel for the petitioner nor any necessity was felt by the trial court to take those photographs on record when

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those were brought in court. Similarly, he had also prepared process sheet while examining the material in question. He did not supply the said process sheet with his report to the IO. With regard to the process sheet also neither any request was made for its production nor the court felt any necessity of the same. The process sheet is nothing but taking of notes on the basis of which the ultimate report was prepared by him. PW14 had given his report after examining the gun shot residue and the barrel. I fail understand as to how the petitioner could say that the report Ex.PW14/B submitted by PW14 was not detailed and left various essential information. The witness has stated and maintained having given the report after having tested the gunshot and barrel. It was for the court to appreciate the evidentiary value of this witness and also to see if the report given by him was lacking any material particulars.

As noted above, none of PW4 and PW14 were witnesses of facts or circumstances but they gave their expert opinions based on finding of examination of the materials.

Having regard to the foregoing facts and circumstances, I do not find any merit in the instant petition. The petition and the application stand disposed of.


M.L. MEHTA, J

NOVEMBER 21, 2011/rd