

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

+ CRL.M.C.NO.3536/2012 & CRL.M.A. 17497/2012

Date of Decision: 19.10.2012

FAZAL KHAN **Petitioner**
Through: Mr.Gurbax Singh, Adv.

Versus

STATE **Respondent**
Through: Mr. Sunil Sharma, APP

CORAM:
HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J. (Oral)

1. This is a petition under Section 482 Cr.P.C. against the order dated 20.9.2012 by virtue of which the application of the petitioner u/S 311 Cr.P.C. for recalling certain witnesses was rejected.
2. I have heard Mr.Singh, learned counsel for the petitioner as well as learned APP for the State.
3. Mr.Singh, has contended that examination of the defence witnesses namely Fazru Nambardar, Kamruddin, Imam and Jamshed whose names were given in the application

filed by the petitioner under Section 311 Cr.P.C. is very essential for the defence of the accused. It was contended by the learned counsel that no doubt in the statement recorded under Section 313 Cr.P.C., the accused had stated that he does not want to examine any defence witnesses but this statement was made when the proxy counsel for the accused was present. It was stated that this statement of the accused should not be taken to his detriment and he may be permitted to examine the defence witnesses. So far as the relevance of the defence witnesses is concerned, it was contended that these witnesses belonged to the Village of the petitioner, who will testify that the petitioner was not present at the place of incidence and he had been picked up from his Village after the incidence. The petitioner in this regard has drawn the attention of the Court to the judgment of the Apex Court in case titled **P.Sanjeeva Rao Vs. State of A.P.** AIR 2012 SC 2242 to contend that the witnesses in the said case were called for the

purpose of cross examination on the ground that the object of Section 311 Cr.P.C. was to prevent the failure of justice on account of mistake of either party to bring on record the valuable evidence or to clear any ambiguity in the statement of the witnesses.

4. In the instant case also, the learned counsel has contended that the petitioner has no doubt stated in his statement under Section 313 Cr.P.C. that he does not want to examine any defence witnesses but this should not be taken as an estoppel against the petitioner to foreclose his right to adduce evidence.
5. I have carefully considered the submissions as well as gone through the record.
6. No doubt there is no dispute about the object of incorporating Section 311 in the Cr.P.C. which is to prevent the failure of justice on account of mistake of either of the parties to bring on record the valuable evidence or to prevent any ambiguity being left on the record which may not be conducive in the interest of

justice but merely because that is the object of law, it cannot be said that every time the accused files an application u/S 311 Cr.P.C. and that too at whatever stage, it has to be necessarily allowed. In the instant case, the purpose of examining the defence witnesses given by the petitioner is that he was not present at the spot and was lifted from the Village. Assuming that this is the defence of the accused/petitioner but then this defence ought to have been reflected in the light of cross examination of the prosecution witnesses as well as in the statement under Section 313 Cr.P.C.

7. The learned counsel for the petitioner has handed over the statement of PW-26/K.P.Shah and PW-28/ACP S.P.Gupta who are the material witnesses and in whose cross examination, the line of defence which has now been taken does not get reflected. Even the statement of the petitioner recorded under Section 313 Cr.P.C., nowhere states that he was lifted from his Village. On the contrary, it has come on record that the petitioner was

arrested at the spot and certain articles were also recovered in pursuance to the disclosure statement having been made. Therefore, I feel that this statement which was made on behalf of the accused at the time of recording of the statement that he does not want to examine any witnesses in defence was a conscious decision and was not a mistake on the part of the accused.

8. The trial court has already observed that the petitioner, by moving the application u/S 311 Cr.P.C. belatedly wants to derail the trial. I have no reason to disagree with the observations made by the trial court because it is the trial court which passes the order after observing the conduct of the accused during the course of entire trial. The very fact that the trial court has observed that the petitioner is filing this application to derail the trial must be having some basis for the Court to say so.
9. In view of the aforesaid reasons, I do not find any infirmity, illegality or impropriety in the order dated

20.9.2012 rejecting the application of the petitioner for summoning the defence witnesses in pursuance to filing of an application u/S 311 Cr.P.C. I also do not find any abuse of the processes of law or any order contrary to the one which has been passed by the learned Sessions Judge deserves to be passed in the instant case. Accordingly, the petition is without any merit and the same is dismissed.

V.K. SHALI, J.

**OCTOBER 19, 2012
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