

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

Date of Decision: February 03, 2015

+ CRL.M.C. 4639/2014 and Crl. MAs No. 15847/14, 16443/14

PRASHANT JAIN Petitioner

Through: Mr. Vikas Arora, Advocate

versus

STATE Respondent

Through: Mr. Vinod Diwakar, Additional
Public Prosecutor with SI Ajay
Kumar, PS Darya Ganj

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

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The petitioner is said to be the brother-in-law (jeth) of the deceased who was tried and convicted for the offence of dowry death but his conviction was set aside by the Division Bench of this Court and the matter was remanded back to the trial Court for being tried on an additional charge of murder.

The petitioner had filed application under Section 311 of Cr.P.C. for recalling Shri Raj Kumar, SDM (PW-28) to confront him with the statement under Section 161 Cr.P.C. The petitioner's application was dismissed by the trial Court vide impugned order of 9th September, 2014.

At the hearing, learned counsel for petitioner submitted that no reply to petitioner's application for recalling Shri Raj Kumar, SDM (PW-

28) was filed by the respondent/State and no objection to the cross-examination of SDM (PW-28) was raised by respondent- State but the trial Court has disallowed the relevant questions to be put to the SDM (PW-28) which is to the detriment of petitioner.

Attention of this Court is drawn to the cross-examination of Shri Raj Kumar, SDM, PW-28 (Annexure F) to point out that although respondent State had no objection to further cross-examine this witness but trial Court has permitted SDM (PW-28) to depose by way of further examination while adopting the earlier Examination in Chief.

It was submitted by learned counsel for petitioner that SDM (PW-28) had visited the spot (place of incident) and conducted on the spot inspection and his statement under Section 161 Cr.P.C. was recorded. It was pointed that its scrutiny is necessary for purpose of cross-examination to bring out the truth.

Attention of this Court was also drawn by learned counsel for the petitioner to further examination of Shri Nitin Kumar, Medical Officer In-charge (PW-25) and Dr. Akash Jhangee, Specialist Forensic Medicine (PW-35) to point out that the relevant questions put to these witnesses have only been disallowed by the trial Court by labelling them to be academic whereas questions sought to be put to these experts were relevant and the denial of cross-examination is detriment to the petitioner.

Mr. Vinod Diwakar, Additional Public Prosecutor for the State, on instructions from SI Ajay Kumar, PS Darya Ganj, Delhi, submits that the statement of SDM (PW-28) under Section 161 Cr. PC was recorded. Let a copy of the said statement be supplied to the petitioner within a week.

Upon hearing and on bare perusal of impugned order and further examination of SDM (PW-28) and Dr. Nitin Kumar (PW-25) and Dr. Akash Jhangee (PW-35), I find that the very purpose of cross-examination is lost if opportunity is not granted to an accused to cross examine a witness on the basis of statement under Section 161 Cr.P.C.

In the impugned order, the trial Court has noted that the counsel for the petitioner/accused were permitted to hurriedly go through the statement under Section 161 Cr. P.C. while he was cross-examining the SDM (PW-28). To say the least, this is not a fair opportunity provided to petitioner/ accused.

Bare perusal of the further examination of PW-28, PW-25 and PW-35 shows that their cross-examination is suo moto restricted by the trial Court by disallowing the questions to restrict it on the additional charge of murder.

No doubt, the cross-examination of witnesses is to be done in respect of a murder charge and not in respect of the dowry death but there cannot be a microscopic supervision of the cross-examination of the witnesses as SDM (PW-28) is a witness to the spot proceedings and so far as the question of nature of poison is concerned and as to whether it was readily available or not and if there were any signs to indicate whether poison was administered are the finer aspects which are relevant to be brought out in the cross-examination and such questions are not to be curtailed in the manner the trial Court has done.

It is true that there is time bound direction to the trial court to decide afresh but it does not mean that fair opportunity is not to be given to the accused.

In the peculiarity of the instant case, instead of disallowing of questions, it would be appropriate if the trial Court records the questions and answers given to those questions and thereafter, at the final stage, decide as to whether questions put are relevant or irrelevant.

In view of the aforesaid, the impugned order is quashed and the trial Court is directed to permit the petitioner to cross-examine PW-25, PW-28 and PW-35 on the additional charge of murder.

With aforesaid directions, the petition and applications are disposed of.

(SUNIL GAUR)
JUDGE

FEBRUARY 03, 2015

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