

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

+ **CRL.REV.P.275/2015**

% Reserved on: 07.07.2015
Date of Decision:10.07.2015

SANDEEP BHATNAGAR Petitioner
Through Mr. Jitender Kumar Dhingra, Adv.

versus

STATE , GOVT OF NCT DELHI Respondent
Through Mr.M.P. Singh, APP.

CORAM:
HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ASHUTOSH KUMAR, J:

Crl. M.A. No. 6974/2015.

Exemption allowed subject to just exemptions.

The Application is disposed of accordingly

Crl. Rev. P. 275/2015

1. The revisionist questions the order dated 16.02.2015, passed by the Ld. ASJ Rohini, in connection with SC No. 40/13 (FIR No.255/2006, PS Vikaspuri), whereby the prayer made on behalf of the Petitioner to summon 7 witnesses to be led as defence witnesses has been partially allowed and only three of such witnesses, namely, V.K. Dass, Neeta Bhatnagar and the concerned record clerk from the office of DCP Traffic, have been summoned to be led in defence of the petitioner.

2. The Petitioner is also aggrieved by the aforesaid order of the court below, whereby the prayer made under section 91 of the Cr.P.C. for summoning the record from the office of Delhi Press regarding “Manohar Kahaniya”, published in July 2006, which contained the photographs of the accused, the chit of paper which was allegedly given by one of the accused to PW1 (Sandeep Dham) which in turn was given to the I.O., and the sketch of the accused who had entered the chamber of PW1 along with the finger print impression of the accused, taken from the crime scene, has been refused.

3. The Petitioner along with other co-accused persons, were made accused in FIR No. 255/2006 (PS Vikaspuri). After investigation, chargesheet was submitted and cognizance was taken. After framing of the charges against the Petitioner and others, 37 prosecution witnesses were examined. Thereafter, the statement of the accused persons, including the Petitioner, was recorded under section 313 Cr.P.C..

4. At that stage, an application was filed on behalf of the Petitioner, seeking issuance of processes for compelling the attendance of 7 witnesses, whom the Petitioner wanted to examine as defence witnesses.

5. The learned court below, vide the impugned order, allowed the summoning of 3 witnesses namely, V.K. Dass, Neeta Bhatnagar (Wife of Petitioner) and the concerned record clerk from the office of DCP traffic.

6. The aforesaid 3 persons were permitted and summoned, as they were required to be examined with respect to the fact that no recovery

was effected from the house of the Petitioner, and that certain challans of the vehicle in question were received after the said vehicle was seized in connection with the present case.

7. The request of the Petitioner for summoning Rajni Tripathi as defence witness was rejected on the ground that she has already been examined as PW 31. If at all any information had to be elicited from her, nothing prevented the Petitioner from cross-examining the aforesaid witness (refer: State of M.P. vs. Badri Yadav, AIR 2006 SC 1769). The prayer made on behalf of the Petitioner, for summoning the records of the encounter of one Mukesh Gupta by the U.P. Police and the press release of the U.P. Police, was declined by the court as it had no bearing with the facts of the present case. Such documents were purportedly requested to be summoned for the reason that aforesaid Mukesh Gupta had been a suspect in the present case as well. Similarly, the request for summoning the record clerk from the office of SSP, Allahabad and DGP headquarters, Lucknow have been rejected.

8. A prayer was made under section 91 of the Cr.P.C. for summoning the record from the office of Delhi Press with respect to “Manohar Kahaniya”, a magazine which was published in July 2006. It contained the photographs of the accused persons. The court below refused to allow such prayer as the prosecution witnesses were confronted with the magazine and the aforesaid magazines containing the photographs of the accused were duly taken on record. Whether the photographs of the accused were taken from the passport or from somewhere else, therefore, lost all relevance. The prayer was refused

on the additional ground that it would not be material whether the magazine containing photographs was published prior to test identification parade of the accused or later.

9. Section 91 of the Cr.P.C. enables the court to order for production of any document or other things which are necessary or desirable for the purposes of trial.

10. What is important is that this section, though arms the court with such powers but those are not unlimited as there are built in limitations. The *sine qua non* for exercise of such powers is the “satisfaction” of the court regarding the desirability and necessity of summoning such document.

11. The discretion therefore is subject to the satisfaction of the Trial court and except for very good reasons, the same ought not to be interfered with.

12. After the evidence for the prosecution in a case is over, an accused has a right to enter on his defence and adduce any evidence, to prove his innocence. This does not mean that the prayer of the accused, for summoning any person to be lead as a defence witness would be blindly allowed by the court. If the court considers, for reasons to be recorded, that such an application has been made for the purpose of vexation or delay or for defeating the ends of justice, the same could be refused. Section 233 Cr.P.C. is quoted hereunder for reference and convenience.

233. Entering upon defence.

(1) Where the accused is not acquitted under section 232 he shall be called upon to enter on his defence

and adduce any evidence he may have in support thereof.

(2) If the accused puts in any written statement, the Judge shall file it with the record.

(3) If the accused applies for the issue of any process for compelling the attendance of any witness or the production of any document or thing, the Judge shall issue such process unless he considers, for reasons to be recorded, that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice.

Sub clause 3 of section 233 of the Cr.P.C., makes it very clear that the court has a discretion in the matter and such right of asking the court for summoning defence witnesses is not unlimited or without fetters.

13. No doubt, the accused has a statutory right to examine any defence witness, nonetheless, if the court perceives that the purpose is dilatory and is not actuated by the reasons for bringing evidence in defence for unravelling the truth, the court could turn down such a request.

14. Normally, the court would not reject the request of the accused to examine important witnesses. But as stated earlier, if the cited witnesses are not relevant and they are sought to be summoned for defeating the ends of justice, the court in its discretion can refuse to summon them, but not without recording reasons.

15. From perusal of the impugned order, it is very evident that the court below has applied its mind over the issue and cogent reasons have been accorded for refusing the prayer of the Petitioner for issuing summons to some of the witnesses cited by him. Whichever witnesses were required to be lead in defence, have been summoned by the court.

16. This court finds no patent irregularity or illegality in the order.

17. In view of the above noted discussion, this revision petition is not fit to be entertained.

18. The Petition is dismissed *in limine*.

Crl. M.A. No. 6973/2015

In view of the main petition having been dismissed, this application becomes infructuous.

This application is disposed of accordingly.

ASHUTOSH KUMAR, J

JULY 10, 2015

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