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

DECIDED ON : 6th NOVEMBER, 2015

+ **CRL.REV.P. 477/2015 & CRL.M.A.No.10908/2015**

LOKESH KHANNA

..... Petitioner

Through : Ms.Geeta Luthra, Sr.Advocate with
Mr.Ujjwal Jain & Mr.Virendra
Hooda, Advocates.

versus

STATE

..... Respondent

Through : Mr.Amit Ahlawat, APP.

**CORAM:
HON'BLE MR. JUSTICE S.P.GARG**

S.P.Garg, J. (Oral)

1. The instant revision petition has been preferred by the petitioner to challenge the legality and propriety of order dated 17.07.2015 of learned Addl. Sessions Judge, by which application under Section 311 Cr.P.C. to recall certain witnesses for further cross-examination was dismissed. Status Report is on record.

2. I have heard the learned Senior Counsel for the petitioner and the learned Addl. Public Prosecutor and have examined the record. The petitioner is facing trial under Sections 498A/304B/302 IPC. The prosecution has already examined all its witnesses. Statements of the accused have been recorded under Section 313 Cr.P.C. Apparently, the trial is its fag end and final arguments seem to be in progress.

3. The petitioner intends to recall for further cross-examination PW-2 (Vinod Kumar), PW-3 (Dr.Pradeep Kumar), PW-6 (Dr.Asitesh Bajwa), PW-11 (Mohd.Hanif Khan) and PW-14 (Dalip Kumar). It is urged that some relevant questions were not put by the previous counsel to them at the time of their cross-examination. Their examination is essential for the just decision of the case. The petitioner is entitled to have fair opportunity to prove his innocence. Reliance has been placed on '*Mohan Lal Shamlal Soni vs. Union of India*', 1991 AIR 1346, '*P.Sanjeeva Rao vs. State of Andhra Pradesh*', 2012 (7) SCC 56, '*Hoffman Andreas vs. Inspector of Customs, Amritsar*', 2000 (10) SCC 430 and '*Shiv Kumar Yadav vs. State*', 2015 (148) DRJ 508.

4. Perusal of the record reveals that PW-2 (Vinod Kumar), SDM Kotwali, an official witness, who conducted inquest proceedings on 27.05.2013 appeared before the Trial Court on 17.04.2014 and was cross-

examined at length. It runs into three pages. PW-3 (Dr.Pradeep Kumar), CMO, Jeevan Mala Hospital, who had conducted medical examination of the victim on 25.05.2013 vide MLC (Ex.PW-3/A) was examined on 17.04.2014 and was duly cross-examined that day. PW-6 (Dr.Asitesh Bajwa) was examined on 01.09.2014 to prove Post Mortem Report (Ex.PW-6/A). His cross-examination was deferred at the request of the defence counsel and he was recalled on 24.02.2015. After cross-examining him for certain duration, again further examination was deferred at the request of learned defence counsel as he wanted to refer Modi's books on Medical Jurisprudence. PW-6 (Dr.Asitesh Bajwa) reappeared on 31.03.2015 and was extensively cross-examined (running into three pages) that day. PW-11 (ASI Mohd.Hanif Khan), appeared as a witness on 21.01.2015 and was duly cross-examined. He was posted in Mobile Crime Team and had arrived at the spot at about 08.30 am on receipt of the information. PW-12 (SI Sushil Kumar) was examined on 22.01.2015. At the request of the defence counsel, his further examination was deferred and he was recalled on 11.02.2015 for cross-examination. He was grilled comprehensively (five pages).

5. Needless to say, all the witnesses being recalled for cross-examination were cross-examined at length on various dates on all

relevant aspects. The petitioner did not move the Trial Court to recall any such witness at the earliest. The instant application was moved after the prosecution had already recorded the statements of all the prosecution witnesses. It is informed that even statements of the accused under Section 313 Cr.P.C. have been recorded. No plausible reasons have been given by the petitioner to recall all these witnesses at a belated stage.

6. In a recent judgment '*AG vs. Shiv Kumar Yadav and ors.*', 2015X AD (S.C.) 165, decided on 10.09.2015, Supreme Court categorically and affirmatively held that fairness of trial has to be seen not only from the point of view of the accused, but also from the point of view of the victim and the society. In the name of fair trial, the system cannot be held to ransom. It further held that while advancement of justice remains the prior object of law, it cannot be understood that recall can be allowed for the asking or reasons related to mere convenience. It has normally to be presumed that the counsel conducting a case is competent particularly when he is appointed by choice of a litigant. It further held that mere change of counsel cannot be ground to recall the witnesses. Mere fact that the accused was in custody and that he will suffer by the delay could be no consideration for allowing recall of witnesses particularly at the fag end of the trial.

7. In the instant case also all the witnesses have been examined at length. Merely because the previous counsel allegedly did not put certain questions, all these witnesses examined long back cannot be recalled. It will be an unending affair. The witnesses being recalled are official witnesses who have no ulterior reasons to suppress or conceal any material fact. This Court cannot comment upon the questions which the previous counsel allegedly failed to put in his wisdom to these witnesses in the cross-examination at the relevant time. This Court in ‘*Raminder Singh vs. State*’, Crl.M.C.8479/2006 in its order dated 20.02.2008 (finding reflection in ‘*AG vs. Shiv Kumar Yadav*’ (supra), held as under :

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“In the first place, it requires to be noticed that scope of Section 311 Code of Criminal Procedure does not permit a court to go into the aspect whether material portions of the evidence on record should have been put to the witness in cross-examination to elicit their contradictions. If the court is required to perform such an exercise every time an application is filed Under Section 311 then not only would it be pre-judging what according to it are ‘material portions’ of the evidence but it would end up reappraising the entire cross-examination conducted by a counsel to find out if the counsel had done a competent job or not. This certainly is not within the scope of the power of the trial court under Section 311 Code of Criminal Procedure. No judgment has been pointed out by the learned Counsel for the Petitioner in support of such a contention. Even on a

practical level it would well nigh be impossible to ensure expeditious completion of trials if trial courts were expected to perform such an exercise at the conclusion of the examination of prosecution witnesses every time.”

8. The revision petition lacks merit and is dismissed. Pending application also stands disposed of.
9. Trial Court record be sent back forthwith with the copy of the order.

(S.P.GARG)
JUDGE

NOVEMBER 06, 2015 / tr