

\$~49

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

+ CRL.REV.P. 275/2016

WASIM

..... Petitioner

Through: Mr.B.S.Chowdhary, Advocate

versus

STATE (NCT OF DELHI)

..... Respondent

Through: Ms.Kusum Dhalla, APP for the State

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

%

28.04.2016

1. The petitioner is aggrieved by the order dated 13th January, 2016 whereby the application filed by him under Section 311 Cr.P.C. for recalling PW-7 Sh.Sahid, PW-11 Sehnaz and PW-14 SI Baljeet Singh for further cross-examination has been dismissed by learned Trial Court.
2. Notice of the revision petition has been given to the State.
3. Heard.
4. Learned counsel for the petitioner, Sh.B.S.Chowdhary has submitted that PW-5, 7, 11 & 14 all are material witnesses and certain questions could not be put to them during their cross-examination by the earlier counsel. The grievance of the petitioner would be redressed only if PW-5 & 7 are allowed to be recalled for further cross-examination.
5. Learned counsel for the petitioner has placed reliance on a decision passed by Hon'ble Supreme Court in *Shailendra Kumar Vs. State of Bihar*

and Others, (2002) 1 SCC 655 wherein in para no. 10 it was held as under:-

“10. Learned counsel for the accused-respondent however submitted that in this case there is no question of referring to Section 311 Cr.P.C., in view of earlier order dated 1.2.2000 passed by the High Court setting aside the order dated 20.9.1995 passed by the Additional Sessions Judge recalling the order dated 3.9.1994 by which the prosecution evidence was declared to have been closed. This submission is without any substance. Section 311 empowers the Court to summon material witnesses though not summoned as witness and to examine or recall and re-examine if their evidence appears to it to be essential to the just decision of the case. It reads thus:-

311. Power to summon material witness, or examine person present-

Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.”

6. Vide impugned order dated 13th January, 2016, learned Trial Court has dealt with the contentions raised on behalf of the petitioner and rejected the same noting as under:-

“It has been argued on behalf of accused persons that their previous counsel could not put certain questions regarding status, previous conduct and character of deceased alongwith relationship of deceased with other persons during cross examination of PW7 and PW11 who are son and wife of deceased. It has been further argued by Ld. counsel of accused

persons that few questions also could not be asked from PW14 SI Baljit Singh by previous counsel and therefore, said three witnesses may be recalled for their further cross examination. Record shows that PW7 was examined on 29.04.2013 and was cross examined at length on 27.08.13, PW11 was examined and cross examined at length on 27.08.13 and PW14 was examined and cross examined on 07.04.14 by two counsels namely Sh. N.K Kadyan Adv and Sh. Sat Narain Sharma Adv who were engaged by accused persons out of their own choice. It is not explained in the said application as to why the accused persons did not move the application under consideration at the earliest available opportunity as record reveals that the present counsel namely Sh. B.S Chowdhary Adv is also representing them since 24.09.2015. Moreover, change of counsel does not constitute any sufficient ground for allowing the prayer of accused to recall prosecution witnesses for their further cross examination. In case the prayer made in the application is allowed then it shall open flood gate for the accused persons to move similar applications one after another at different stages of trial by changing their counsels. In any case, no sufficient ground has been disclosed by applicants/accused persons for recalling PW7, PW7 and PW14 for their further cross examination. Consequently, the application is hereby dismissed.”

7. Under Section 311 Cr.P.C, the power has been conferred on the Trial Court to be exercised to secure the ends of justice. This is for the Trial Court to vet and analyse whether in the given facts and circumstances of the case, which are peculiar to each case, exercise of discretionary power under Section 311 Cr.P.C. is just and proper. This Court should be slow to substitute its opinion with that of the judicial discretion exercised by learned Trial Court. It is only in exceptional circumstances that the superior Court should take remedial measures when it is noticed that if remedial steps not taken, it will result in miscarriage of justice.

8. In a decision passed by this Court in ***Raminder Singh v. State, Crl. M.C. No. 8479 of 2006*** it was held as under:-

“6. In the first place, it requires to be noticed that scope of Section 311 Cr.P.C. 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 CrPC. 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 might 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.”

9. No such cause can be deciphered in this petition. A witness cannot be permitted to be recalled for further cross-examination that too after a lapse of considerable time just for the reason that the newly engaged counsel felt that certain questions which he feels relevant have not been put to the witnesses by the previous counsel.

10. I do not find any illegality in the impugned order. The revision petition is hereby dismissed.

PRATIBHA RANI, J.

APRIL 28, 2016/‘pg’