

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

+ **CRL.REV.P. 185/2015 & CrI.M.A. 4564/2015**

Date of Decision : April 26th, 2016

SABBIR ALAM

.....Petitioner

Through Mr.Rajat Srivastava, Adv.

versus

STATE

.....Respondent

Through Mr.Amit Chadha, APP for the State
With SI Nitin Nawani, PS Hauz Khas.

CORAM:
HON'BLE MR. JUSTICE P.S.TEJI

P.S.TEJI, J.

1. The present revision petition under Section 397(1) of the Code of Criminal Procedure, 1973 (hereinafter shall be referred to as the "Cr.P.C.") has been filed by the petitioner against the order dated 18.02.2015 passed by the learned Additional Sessions Judge, Central, Delhi vide which the application filed by the State for arraying Constable Rajender and Constable Ravinder as witnesses has been allowed and their names have been added in the list of witnesses.

2. The facts, in brief, are that the petitioner along with two other co-accused persons is facing trial before the Trial Court in FIR No.93/2010, under Section 498-C/34 IPC, Police Station Hauz Qazi. The names of Constables Rajender and Ravinder were initially in the

list of witnesses. At the time of compliance under Section 207 Cr.P.C, before committal of case to the Court of Sessions, it was submitted by the Investigating Officer that the names of Ct. Ravinder and Ct. Rajender were inadvertently added in the list of witnesses but their statements under Section 161 Cr.P.C. were not recorded. On the request of the Investigating Officer, the learned Metropolitan Magistrate dropped/deleted the names of Ct. Rajender and Ct. Ravinder from the list of witnesses, whereas names of HC Narender and Ct. Satbir were added in the list of witnesses. Thereafter, the case was committed the Court of Sessions.

3. On 29.01.2015, an application was moved on behalf of the State seeking addition of names of Ct. Rajender and Ct. Ravinder in the list of witnesses. Vide impugned order dated 18.02.2015, the learned ASJ allowed the application and also allowed the addition of names of Ct. Rajender and Ct. Ravinder in the list of witnesses. Feeling aggrieved of the same, the present revision petition has been filed by the petitioner.

4. I have heard the learned counsel for the petitioner as well as learned Additional Public Prosecutor for the State.

5. Argument advanced by the learned counsel for the petitioner is mainly on the ground that earlier on the request of the Investigating Officer of the case, names of both the Constables Rajender and Ravinder were dropped from the list of witnesses vide order dated 15.12.2012 and now by passing the impugned order dated 18.02.2015, the learned ASJ added their names in the list of witnesses which amounts to review of its own order. It is further argued that power of

review of its own order is not vested in the criminal courts and a great prejudice has been caused to the petitioner while allowing the above said two constables as witnesses.

6. On the other hand, learned APP for the State has argued that the names of Constables Rajender and Ravinder are there in the seizure memo of counterfeit currency recovered from the petitioner and other co-accused persons. It is further argued that both these witnesses are of vital importance and if they are not allowed to be examined, a serious prejudice would be caused to the case of the prosecution.

7. It is matter of record that the petitioner and his co-accused persons are facing the trial under Section 489C/34 IPC for possessing forged or counterfeit currency notes. The case is at the stage of prosecution evidence. It is contended by the learned APP for the State that Constable Rajender and Constable Ravinder are the material witnesses as they remained associated in the recovery proceedings and the seizure memo of the currency notes bore their signatures. This fact has not been disputed by the learned counsel for the petitioner that these two witnesses are the signatory to the seizure memo, though the case set up by the prosecution has been denied by the counsel for the petitioner.

8. It is also matter of record that earlier the abovesaid witnesses were dropped by the learned Magistrate on the request of the Investigating Officer as their statements under Section 161 Cr.P.C. were not on record. But when the fact regarding their joining of the recovery came on record, the same were sought to be added in the list of witnesses by the prosecution. The said request of the prosecution

was acceded to by the learned ASJ and vide impugned order the application for adding them in the list of witnesses and to examine them has been allowed. The order passed by the learned ASJ can in no way be called a review of the order passed earlier for the reasons that the earlier order dated 15.12.2012 was passed by the learned Magistrate and that too is before the committal of case to the Court of Sessions.

9. In view of the above discussion, this Court finds no ground in the present revision petition. The petitioner has failed to show any illegality or infirmity in the impugned order. The petitioner has failed to show any exceeding of jurisdiction by the learned ASJ or the failure to exercise the jurisdiction vested in her.

10. Consequently, the present revision petition is hereby dismissed.

11. Application CrI.M.A. 4564/2015 is also disposed of.

APRIL 26, 2016
dd

(P.S.TEJI)
JUDGE