

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

Date of Decision: September 01st, 2016

+ **CRL.M.C. 1754/2016 & CrI.M.A. No.7416/2016**

ASHOK KUMAR BIND Petitioner
Through **Mr.K. Singhal, Adv.**

versus

STATE NCT OF DELHI Respondent
Through **Mr.Izhar Ahmad, APP for the State.**
SI Jagmul Singh.

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

P.S.TEJI, J.

1. The present petition has been filed under Section 482 of Code of Criminal Procedure (hereinafter shall be referred as Cr.P.C.) against order dated 30.03.2016 passed by the Trial Court whereby the application filed by the petitioner under Section 311 Cr.P.C. was dismissed.

2. The facts in brief are that the case FIR No.99/2013 under Section 302 IPC, Police Station New Delhi Railway Station was registered on the basis of statement made by the complainant Purushottam M.N. The complainant had stated that on 09.06.2013 he along with his friend Aditya Birla had come to Delhi to give exam of DSSSB. They both came to New Delhi Railway Station. His friend was sleeping on the bench outside S.S. Office. At about 12.30 a.m., one person came and asked Aditya Birla to get up as he

had to sleep on the bench. When complainant refused, the said person started quarreling. In the meanwhile, that person picked up a stone lying on the gutter and hit the same on the head of Aditya due to which blood oozed out from the head of Aditya. When the complainant tried to catch the assailant, the complainant was also attacked. The complainant raised alarm. The police reached the spot and the said person, whose name was later on revealed as Ashok Bind, was apprehended. Injured was taken to hospital in PCR vehicle. During treatment, Aditya expired in the hospital. On the basis of statement of the complainant and MLC of the deceased, the instant FIR was registered.

3. The petitioner/accused was arrested and after completion of investigation, charge sheet was filed in the Court. The prosecution evidence commenced. During the pendency of the trial, an application under Section 311 Cr.P.C. was moved by the accused for recalling witnesses PW1, PW2, PW5 to PW8 and PW11. The Trial Court after going through the material available on record, dismissed the said application vide impugned order dated 30.03.2016. Feeling aggrieved by the dismissal of the said application, the present petition has been preferred by the petitioner/accused.

4. Arguments advanced by the counsel for the petitioner as well as Additional Public Prosecutor for the State were heard.

5. Argument advanced by the counsel for the petitioner is that the witnesses which are sought to be cross-examined are material and their cross-examination is essential. Except the complainant

(PW1), no other witness was cross-examined. It is further argued that the cross-examination of PW1 was very poor and relevant questions were not asked from the said witness. Further cross-examination of PW1 is necessary for proper cross-examination. Witnesses are yet to be confronted with the statement made by other witnesses and the recovery.

6. In support of the above contentions, judgments in the case of *Natasha Singh v. Central Bureau of Investigation (State) (2013) 5 SCC 741*, *Hoffman Andreas v. Inspector of Customs, Amritsar (2000) 10 SCC 430*, *Manoj Kumar & Ors. v. The State (NCT of Delhi) (Crl.A. 638/2009 decided by this Court on 27.03.2012)*, *Iddar and others v. Aabida and another (2007) 11 SCC 211*, *U.T. of Dadra & Nagar Haveli and another v. Fatehsinh Mohansinh Chauhan (2006) 7 SCC 529*, *Mohanlal Shamji Soni v. Union of India and another 1991 Supp (1) SCC 271* and *Rajaram Prasad Yadav v. State of Bihar and another (2013) 14 SCC 461* to press the contention that the Court can exercise the power of recalling the witness at any stage and the Court has to see whether there was effective cross-examination of a witness or not.

7. Perusal of record shows that the complainant (PW1) was cross-examined at length by the counsel for the accused on 04.04.2014. The ground taken by the petitioner that the earlier counsel did not effectively cross-examine the complainant, cannot be a ground to recall the witness after availing the opportunity of cross-examination. In the considered view of this Court, when a witness has been cross-examined to the satisfaction of the defence,

he cannot be recalled again and again on the ground that new counsel has been engaged and he has been advised to cross-examine the already cross-examined witness. Even otherwise, in the case *Nisar Khan @ Guddu versus State of Uttarakhand* 2006 (9) SCC 386, it has been held that no public witness can be recalled after a lapse of one year that too after the witnesses were examined, cross-examined and discharged. Admittedly, in the present case also, the complainant (PW1) was examined, cross-examined and discharged.

8. So far the other witnesses i.e. PW2, PW5 to PW8 and PW11 which the petitioner sought to recall for the purpose of cross-examination are concerned, their testimony is formal in nature. These witnesses are either the police officials or the railway booking supervisor and the opportunity to cross-examine those witnesses was given to the accused. The said opportunity was duly availed but, despite the same, the witnesses were not cross-examined. After duly availing the opportunity to cross-examine, now the petitioner cannot claim that the said witnesses be recalled for cross-examination as he was not advised properly by the early counsel. Apparently, the prosecution evidence has already been closed on 16.05.2016 and even the statement of the accused under Section 313 Cr.P.C. was recorded on 14.07.2016 but he opted not to adduce any evidence in his defence. Thus, the judgments relied upon by the petitioner as mentioned above are of no assistance to him.

9. In view of the above mentioned facts and circumstances, this

Court does not find it proper to recall the witnesses PW1, PW2, PW5 to PW8 and PW11. Consequently, the present petition is dismissed.

10. Application CrI.M.A. No.7416/2016 is also disposed of.

(P.S.TEJI)
JUDGE

SEPTEMBER 01, 2016
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