

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C.4842/2014**

Date of Decision: 27.05.2016

ROMESH SHARMA Petitioner
Through **Mr.Prem Kumar,Adv.with**
Mr.Rakesh Kumar, Adv. &
Mr.J.Nischal, Adv.
versus

STATE NCT OF DELHI Respondent
Through **Mr.Mukesh Kumar, APP.**
SI Sandeep Yadav, Crime Branch.

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

P.S.TEJI, J.

1. The present petition under Article 227 of the Constitution of India and under Section 482 Cr.P.C. praying for quashing the order dated 15.09.2014 passed by the Trial Court on the applications of the petitioner under Sections 294 & 311 Cr.P.C.
2. The brief facts of the case are that the petitioner filed an application under Section 294 Cr.P.C. before the Trial Court praying to place on record a number of relevant and material documents to prove his defence with a further prayer to call up the prosecution side to admit or deny the documents.
3. Though the application did not mention the details of documents, however, the learned counsel mentioned that the details

are mentioned in another application moved under Section 311 Cr.P.C. and these documents were in the form of Construction Material Bill, Photographs, etc. to show that property in question was developed and constructed by accused from 1990 to 1997. The Court opined that Section 294 Cr.P.C. is not meant for aforesaid documents as it refers only to such documents which when formerly proved speak for themselves and it does not refer to documents which even if exhibited, cannot be read in evidence as a substantive piece unless makers thereof are examined in Court.

4. By way of application under Section 311 Cr.P.C., the accused prayed for summoning of complainant Sh.M.K.Subba, PW1, for his further cross examination. It is submitted by learned defence counsel that accused has already placed on record number of documents to show that he raised entire construction in the property in question after purchasing it but since these documents have not been proved as per the Indian Evidence Act, the complainant may be confronted with these documents, otherwise the accused would be required to call all the contractors, suppliers of building material etc. to prove his defence that he spent huge amount in property in question at the relevant time. It was argued that the charges framed cannot stand once accused is able to show that he has been in possession of property in question after it was sold by complainant and his wife. It is also contended that all these documents are required to be proved since this would help the Court in arriving at a just decision and would demolish the prosecution case. To lend support to his case, reliance was placed on the decisions of Hon'ble Supreme Court reported as *Jamatraj Kewalji*

Govani v. The State of Maharashtra; AIR 1968 SC 178, & Mohanlal Shamji Soni v. Union of India; 1991 Suppl. (1) Sec. 271.

5. On the contrary, the learned Special PP argued that the application has been moved just to delay the decision of the case. It was further pointed out by the learned Special PP for the State that defence side had taken 5 dates for cross examination of PW1 and moreover, the PW1 was cross-examined on 09.08.2001 in respect of cross case registered against him for taking forcible possession of the property in question.

6. This Court cannot disagree with the submissions of the learned defence counsel that Court has been given wide powers to recall the witness at any stage of trial if his evidence appears essential for the just decision of the case. The case law cited by the learned defence counsel also focused on the ground laid down in this regard.

7. It is evident that defence side had conducted the cross examination of complainant (PW-1) on five dates and he has been cross-examined in detail. It is not the plea of defence that accused was not properly represented by his counsel during cross-examination of the complainant. It is also not his case that he is a poor illiterate person who was not aware about the consequences of not engaging a competent lawyer. Rather, it is admitted position that applicant is a man of means and was properly represented by counsel throughout the trial. Further, there is no explanation from accused side as to why aforesaid documents were not produced during cross examination of complainant for confrontation, otherwise also, it is seen that these documents were placed on record in 2008 and thus it has not been

made clear as to why accused took about six years to decide that confrontation of complainant is required in respect of these documents. Furthermore, this Court does not find any force in the submissions of the learned defence counsel that since he was handed over this case recently, this application could not be moved earlier. It is found that the learned Special P.P. for the State started advancing final arguments on 24.03.2014 and concluded it on 12.05.2014 in five dates and thereafter accused sought adjournments on one pretext or another to advance final arguments and opted to move these applications after six adjournments.

8. It was observed by the Trial Court that statements of both the accused persons under Section 311 Cr.P.C. were concluded on 02.07.2007 and after taking eight adjournments, accused persons opted not to lead evidence in defence. Their evidence was ordered to be closed vide order dated 13.03.2008 and at the same time accused were permitted to file documents with their statement of defence. Thus, it is clear that petitioner/accused was given sufficient opportunities to prove the aforesaid documents during his defence evidence but he decided not to prove the documents formally.

9. Otherwise, it is not a disputed position that accused had remained in possession of property in question from 1990 to 1997/98 and thus the documents referred to by him would be of no help to decide the real controversy as to whether accused prepared and used forged title documents to usurp property.

10. Otherwise also, law on the point is well settled that due care should be taken by Court while exercising powers under this section

and it should not be used for filling up the lacuna left by prosecution or defence. Further the Hon'ble Apex Court in case reported as *Nisar Khan @ Guddu @ Other's v. State of Uttranchal* (2006) 9 SCC 386, held that the Court should not recall an eye witness after the lapse of one year of his discharge after proper cross examination, whereas in the case in hand the accused is praying for recalling the witness after a gap of about 13 years.

11. In view of above, it is clear that petitioner/accused had been given sufficient opportunities at every stage to prove his defence. The matter is very old and is pending for final arguments for the last about six years. The Trial Court observed that the petitioner moving the said applications after the conclusion of final arguments on behalf of prosecution and after taking so many adjournments for addressing final arguments being taken from defence side clearly reflects that these have been filed just to gain time and to delay the verdict. Strength in this regard may be had from the judgment of the Hon'ble Apex Court in *Nisar Khan @ Guddu's case (supra)*. Accordingly, both the applications were dismissed.

12. I do not find any infirmity or illegality in the order dated 15.09.2014

13. The petition is accordingly dismissed.

(P.S.TEJI)
JUDGE

MAY 27, 2016
dd/dm