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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL. M.C. 1754/2017**

ARNAB GANGULI

....Petitioner

Through: Mr. K. Singhal, Advocate.

versus

STATE (NCT) DELHI

....Respondent

Through: Mr. Amit Ahlawat, APP for the State
with SI Kamlesh, PS Sagar Pur

CORAM:
HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

ORDER
18.09.2017

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1. By way of the present petition filed under Section 482 of Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.') the petitioner has prayed for :-

(i) **quashing/setting aside of order dated 25.01.2017** passed by the Additional Session Judge (hereinafter referred to as 'ASJ') dismissing an application under Section 311 of Cr.P.C., on behalf of the petitioner, seeking directions to I.O to bring the call details record which were already directed to be preserved in the Session Case arising out of FIR No. 159/2016 under Sections 376/328/354D/506 of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC'), registered at P.S, Sagar Pur;

(ii) **quashing/setting aside of order dated 18.03.2017** passed by the ASJ dismissing an application under Section 311 of Cr.P.C. on

behalf of the petitioner, for recall of prosecutrix for further cross-examination;

(iii) **directions to the concerned Trial Court to expedite the trial** of Session Case arising out of FIR No. 159/2016 under Sections 376/328/354D/506 of IPC.

2. The brief facts of the case are that the prosecutrix, filed a written complaint on 25.02.2016 alleging that in the first week of December, 2015 the prosecutrix while going to her office alongwith the petitioner, who worked in the same company with her, accompanied the petitioner to his home as he wanted to pick up a voucher book. The prosecutrix stated that the petitioner offered her water, on consumption of which she felt drowsy and when she regained consciousness she found herself in the petitioner's bedroom in an objectionable situation. The prosecutrix further alleged that the petitioner thereafter started blackmailing her that he would reveal a videotape and other pictures in his possession which are likely to be taken by the petitioner at the time of the alleged incident, to her husband. The petitioner is also alleged to have threatened the prosecutrix that he would kill her husband, kidnap her daughter and commit suicide in front of her family. On this the prosecutrix has stated to have left her job but the petitioner continued to blackmail her, which eventually led to lodging of the present complaint.
3. Mr. K. Singhal, learned counsel for the petitioner contended that the balance of convenience in the present case lies in favour of the petitioner and if the present petition is not allowed, he shall suffer

from irreparable loss and injury; that even before the cross examination of the prosecutrix, the petitioner moved an application before the Trial Court to produce the CDRs along with the Location Chart of the Phone Numbers 9599293329, 9599293327, 9599293325 & 9599293326 pertaining to M/s Cyberage E-Solutions Pvt Ltd and number 8689057724 belonging to the prosecutrix for the period 01.09.2015 to 25.02.2016; that the said call records pertain to the prosecutrix and the CDRs are crucial for the petitioner to establish his defense and disprove the charges framed against him; that the Trial Court has failed to consider the matter in totality and its orders dated 25.01.2017 & 18.03.2017 suffer from illegality and dictum of law laid down by the Hon'ble Supreme Court in regard to the principle of just and proper decision; that during the pendency of trial if the defense has got some clues to prove the falsity in the version of the prosecutrix, the defense should be given a fair opportunity to utilize that clue; that Section 311 Cr.P.C. empowers the court to summon a material witness, or to examine a person present at “any stage” of “any inquiry” or “trial” or “any other proceedings”; that the petitioner had to undergo detention without any fault of his own and therefore the impugned orders be set aside.

4. In support of his contentions the counsel for the petitioner has relied upon the judgement of the Apex Court in ***Rajendra Prasad v. Narcotic Cell, through its Officer-in-Charge, Delhi***, reported in ***AIR 1999 SC 2292***, wherein it has been held that:-

“No party in a trial can be foreclosed from correcting

errors. If proper evidence was not adduced or a relevant material was not brought on record due to any inadvertence, the court should be magnanimous in permitting such mistakes to be rectified. After all, function of the criminal court is administration of criminal justice and not to count errors committed by the parties or to find out and declare who amongst the parties performed better.”

5. Per contra, Mr. Amit Ahlawat, learned APP for the state has opposed the present petition on the grounds that a lengthy cross-examination of the prosecutrix has already been completed and all evidence brought in by the defence has already been put to her; that the present petition has been filed with the motive of harassing the prosecutrix knowing that she is pregnant; that the documents requested to be called on record by the petitioner cannot be put to the prosecutrix in cross-examination as the prosecutrix is neither the author of the said documents nor the witness of those documents; that the alleged impugned orders have been passed by the Trial Court after careful perusal of the statement of the prosecutrix; that the trial is on the final stage and therefore the said petition be dismissed.
6. I have heard the learned counsel for the parties and perused the material placed on record.
7. At the outset it is observed that the Trial Court vide order dated **25.01.2017**, dismissed the application filed on behalf of the accused/petitioner, by holding that the prosecutrix is in no way related to the documents which the petitioner seeks to be placed on record and hence the said documents could not be put to her.

It further observed as under:-

"In fact the cross-examination has been conducted on his behalf regarding those facts. Now to disprove the version of the prosecutrix, these documents may be relevant but for the purposes of cross examination of the prosecutrix, it has no relevance at this stage. In fact in the present case, the prosecutrix has already been cross-examined on behalf of the accused"

Therefore from the above it is rather clear that the Trial Court has although dismissed the application of the petitioner whereby he seeks directions to I.O to bring call details record which are already directed to be preserved, however the Trial Court did not completely bar the petitioner from placing the said documents on record as it grants an opportunity to the petitioner to summon the said documents in his defence.

8. Further the Trial Court vide order dated **18.03.2017** dismissed the application of the accused/petitioner for recalling of the witness/prosecutrix on the ground that the details of the relevant documents had not been provided in the application nor the said documents were attached thereto to show their relevancy in the ongoing matter.
9. For the purpose of deliberation, Section 311 of Cr.P.C. is reproduced hereunder:-

"Section 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."

Therefore Section 311 Cr.P.C. empowers the Court to summon any material witness if his evidence appears to be essential for the just decision of the case.

10. In ***Rama Paswan and Ors. vs. State of Jharkhand*** reported in **(2007) 11 SCC 191** the Apex Court while discussing the nature and extent of power vested in the Courts under section 311 Cr.P.C. observed as under:-

"The object underlying Section 311 of the Code is that there may not be failure of justice on account of mistake of either party in bringing the valuable evidence on record or leaving ambiguity in the statements of the witnesses examined from either side. The determinative factor is whether it is essential to the just decision of the case. The section is not limited only for the benefit of the accused, and it will not be an improper exercise of the powers of the court to summon a witness under the section merely because the evidence supports the case of the prosecution and not that of the accused. The section is a general section which applies to all proceedings, enquiries and trials under the Code and empowers the Magistrate to issue summons to any witness at any stage of such proceedings, trial or enquiry. In Section 311 the significant expression that occurs is "at any stage of any inquiry or trial or other proceeding under this Code". It is, however, to be borne in mind that whereas the section confers a very wide power on the court on summoning witnesses, the discretion conferred is to be exercised judiciously, as the wider the power the greater is the necessity for application of judicial mind."

11. Therefore, keeping in view the principles laid down by the

Supreme Court, it is manifestly clear that recall is a matter of discretion vested in the court which has to be exercised judiciously to prevent failure of justice and not arbitrarily.

12. In the instant case the prosecutrix has already undergone a detailed and lengthy cross-examination by the defence counsel covering all material aspects. CDR of mobile numbers belonging to both the prosecutrix and the petitioner respectively were duly placed on record and were put to the prosecutrix during her cross examination alongwith whatsapp chat from the period 30.09.2015 to 24.02.2016. The petitioner purports to rely on some fresh CDR's, location charts and whatsapp chats of other mobile numbers to disprove the case of prosecution. However the petitioner has not given any relevant details of the documents that were left to be put to the prosecutrix during her cross-examination, nor has any explanation come-forth from him to show that the said mobile numbers were possessed by the prosecutrix or the prosecutrix was in any way linked to the said documents.
13. Certainly recall could be permitted if essential for the just decision but not on such ground as has been adopted by the petitioner in the present case. Mere fact that recall is necessary "for ensuring fair trial" is not enough unless there are tangible reasons to show how the fair trial suffered without recall. The recording of evidence in the present case is at the far end. A plea to recall the prosecutrix for further cross-examination at this stage is unwarranted and the petitioner is not likely to be prejudiced as he has already availed of his right to cross-examine the witness. Also further cross-

examination of the prosecutrix is by no means seen to be essential for the just decision of this case.

14. The law is trite that the powers of this court under Section 482 Cr.P.C. must be exercised cautiously and only in those cases where there is glaring injustice or abuse of process of court.
15. Considering the ambit of Section 311 of Cr.P.C. in the light of facts and circumstances of the present case, this Court is of the opinion that the matter in hand does not appear to be a case where any interference is called for. What is the effect of evidence already recorded and that which is alleged to be brought on record by the petitioner shall be considered by the concerned Trial Court. Therefore the orders dated 25.01.2017 and 18.03.2017 passed by the Trial Court neither suffer from any illegality, nor are liable to be set aside. Hence the same are upheld.
16. The petition lacks merit and is therefore dismissed.
17. Accordingly, the petition stands disposed of.

SANGITA DHINGRA SEHGAL, J

SEPTEMBER 18, 2017