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**IN THE HIGH COURT OF DELHI AT NEW DELHI
CRL. REV. P. 405/2017**

BIMLA DEVI

....Petitioner

Through : Mr. Sandeep Thukral, Advocate.

Versus

THE STATE GOVT OF NCT OF DELHI

....Respondent

Through : Mr. Mukesh Kumar, APP for the State
with SI Shailender Kumar Singh, PS-
Gokul Puri.

CORAM:

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

O R D E R

01.11.2017

1. The present Criminal Revision Petition has been filed under Section 397 Cr.PC assailing the order dated 02.05.2017 passed by the Special Judge (POCSO Act)/Additional Sessions Judge in SC No. 44694/2015, FIR No. 247/2013 under Section 376/506 IPC and Section 4/17 of POCSO Act registered at Police Station - Gokal Puri, whereby the application under Section 311 Cr.PC moved by the petitioner for recalling the victim/prosecutrix for cross examination, was dismissed.
2. Aggrieved by the aforesaid order, the learned counsel for the petitioner contended that while declining the prayer of the petitioner, the learned Trial Court failed to make any endeavour to record its finding, more particularly the factum of essentiality to recall the witnesses for just decision of the case; that the Amicus Curaie provided to the petitioner was appointed on the very same day of cross examination of the victim/prosecutrix and in the

absence of case file, the witness was not properly cross examined; that the victim/prosecutrix has not assigned any role to the petitioner in the FIR as well as in her statement recorded under Section 164 Cr.PC.

3. Supporting the impugned order, learned counsel for the State argued that the victim/prosecutrix was examined at length and also cross examined at length by the defence counsel, hence, calling the victim/prosecutrix again for re- examination would not be proper for just decision of the case. He further added that the Trial Court has examined the application of the petitioner under Section 311 Cr.P.C. threadbare and by a well reasoned speaking order declined the prayer, which cannot be made subject matter of judicial review in exercise of inherent jurisdiction of this Court.
4. I have given my thoughtful consideration to the rival contentions of the parties and have examined the record.
5. In the instant case, PW1/victim/prosecutrix examined by the prosecution at length on 26.04.2014 and her cross examination was deferred for 09.09.2014. On 09.09.2014, she was examined by the Amicus Curiae appointed for the petitioner. After about 3 years, the petitioner moved an application seeking recalling of PW1/victim/prosecutrix for the cross examination, which was dismissed vide the order under challenge. Relevant part of the impugned order reads as under:

"xxxxx Ld. Counsel for the accused has moved an application U/s. 311 Cr.PC for recalling PW1/victim for further cross-examination on the ground that she could not be properly cross-examined. The record shows

that the victim was cross examined on 09.09.2014 by the same very Counsel who has now moved the present application. Apart from the inordinate delay in moving the application, no cogent grounds have been pleaded in the application or argued before this Court for making any ground for recalling the victim. Section 33(5) of the POCSO Act lays down that the Special Court shall ensure that the child is not called repeatedly to testify in the Court. Hence, in view of the said provision and in the absence of any cogent ground for recalling the victim, the application stands dismissed.

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6. Section 311 of the Code of Criminal Procedure has two limbs and reads as under:

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

Any court may, at any stage of any inquiry, trial or other proceedings under this Court, 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."

7. Section 33(5) of the POCSO Act provides that *"The Special Court shall ensure that the child is not called repeatedly to testify in the Court."*
8. The POCSO Act is a Special Act which mandates that a child victim should not be called repeatedly to testify in the Court. The Trial Court dismissed the application of the petitioner for recalling PW1/victim/prosecutrix primarily by invoking the Section 33(5) of

the POCSO Act and secondly that on inordinate delay of three years in filing the application that too without any cogent and sufficient ground for recalling the witness.

9. Keeping in view the facts and circumstances of the present case, I find that the order impugned does not suffer from any illegality or infirmity. Accordingly, the present revision petition being without substance is liable to be dismissed.
10. Ordered accordingly.

SANGITA DHINGRA SEHGAL, J

NOVEMBER 01, 2017
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