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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision : 29.10.2018

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CRL.M.C. 4607/2018 & CRL.MA.31849/2018

AMIT SHARMA

..... Petitioner

Through: Mr. Ravi Chawla with
Mr. Komal Sharma, Adv.

versus

STATE (GOVT OF NCT OF DELHI)

..... Respondent

Through: Mr. Mukesh Kumar, APP for State with
SI Bhagat Singh, PS Ashok Vihar, Delhi.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. By the present petition under Section 482 Cr.PC, the petitioner impugns the order dated 11th May, 2018 passed by the learned Special Judge, CBI-01, North-West District, Rohini Courts, whereunder the revision petition being *Crl.Rev.No.72/2018* filed by the petitioner, was dismissed and the order dated 13th February, 2018 passed by the Additional Chief Metropolitan Magistrate, North-West District, Rohini Courts was upheld.

2. The brief facts emerging from the record are that pursuant to a FIR No.703/98 under Section 30 of the Arms Act read with Section 420 and 471 of the IPC registered at Police Station Ashok Vihar, a chargesheet

was filed against the petitioner, as a consequence of which he is currently facing trial before the learned Additional Chief Metropolitan Magistrate, North-West District, Rohini Courts (hereinafter referred to as “ACMM”). The record shows that on 13th February, 2018, PW-9, i.e., Sh. Harsh Wardhan, Retired Assistant Director (Documents), FSL, Haryana, Madhuban, Karnal had appeared and, after being cross-examined, was discharged. It transpires that after he had been discharged but before leaving the court premises on the very same day, PW-9 realised that he had made certain averments which were not in consonance with the record, i.e. his report exhibited at Ex.PW9/A. Therefore, he appeared before the learned ACMM and prayed that he may be re-examined on those aspects which were in consistent with the document exhibited as Ex. PW-9/A.

3. Based on the aforesaid request made by PW-9, the learned ACMM allowed him to make an additional statement, whereafter a due opportunity of cross-examining him was given to the petitioner herein. It is undisputed that despite granting the petitioner an opportunity to cross-examine PW-9, no such opportunity has been availed till date.

4. Aggrieved by the order dated 13.02.2018 recording the evidence of both PW 9 and PW 10, the petitioner approached the learned ASJ by way of filing *Crl.Rev.No.72/2018*, which has been dismissed vide the impugned order dated 11.05.2018 with the observations that the learned ACMM had ample power to re-examine PW-9 in view of the contradiction in his deposition with respect to his report Ex.PW-9/A. It

may be noted that although the learned ASJ found that the procedure adopted by the learned ACMM was not correct, in view of the fact that the petitioner had been granted a further opportunity to cross-examine PW-9, the learned ASJ dismissed the petitioner's revision petition vide order dated 11.05.2018 on the ground that no prejudice was caused to him. It is in these circumstances that the petitioner has filed the present petition, impugning the order dated 11.05.2018 passed by the learned ASJ.

5. Learned counsel for the petitioner submits that once the learned ASJ had found that the procedure adopted by the learned ACMM for re-examining PW 9 was not correct, it was incumbent upon him to set aside the order passed by the learned ACMM. He submits that the grave prejudice has been caused to the petitioner because he would have derived a benefit due to the inconsistency in the statement of the PW-9 before the learned ACMM.

6. Learned counsel for the petitioner further submits that when PW-9 was examined and cross-examined, the atmosphere in the Court was very congenial and there was no reason to believe that the said witness made a mistake. He, therefore, submits that PW-9 cannot be permitted to subsequently improve upon his statement made in Court.

7. On the other hand, Mr. Mukesh Verma, learned APP opposes the petition and submits that PW-9 was not a private witness but an official witness who was deposing qua a report given by him in the year 1999 when he was posted with Government of NCT as a Senior Scientific

Officer (Documents), FSL Haryana, Madhuban, Karnal. Therefore, in view of the length of time that had elapsed since PW 9 had given his report, the learned ACMM had rightly allowed him to be re-examined on the same day. He further submits that no prejudice has been caused to the petitioner by the order passed learned MM permitting the re-examination of PW 9, as the petitioner was granted an adequate opportunity to cross-examine him and, therefore, the learned ASJ has rightly dismissed the petitioner's revision petition.

8. Before I deal with the rival contentions of the parties on merits, it may be appropriate to note the scope of the High Court's inherent powers under Section 482 CrPC to interfere with an order of the Court below, when the petitioner has already exercised his statutory remedy of preferring a revision petition. Reference may be made to the decision of a co-ordinate bench of this Court in ***Surender Kumar Jain vs. State & Anr.*** [ILR (2012) 3 Del 99], the relevant paragraph 5 of which is reproduced hereinbelow:

"5. The issue regarding filing of petition before the High Court after having availed first revision petition before the Court of Sessions has come up before the Supreme Court and this Court repeatedly. While laying that section 397(3) Cr. P.C. laid statutory bar of second revision petition, the courts have held that High Court did enjoy inherent power under section 82 (sic) Cr. P.C. as well to entertain petitions even in those cases. But, that power was to be exercised sparingly and with great caution, particularly, when the person approaching the High Court has already availed remedy of first revision in the Sessions Court. This was not that in every case the person aggrieved of the order

of the first revision court would have the right to be heard by the High Court to assail the same order which was the subject matter of the revision before Sessions Court. It was all to depend not only on the facts and circumstances of each case, but as to whether the impugned order bring about a situation which is an abuse of process of court or there was serious miscarriage of justice or the mandatory provisions of law were not complied with. The power could also be exercised by this Court if there was an apparent mistake committed by the revisional court. Reference in this regard can be made to the judgments of the Supreme Court in Madhu Limave v. State of Maharashtra(1977) 4 SCC 551, State of Orissa v. Ram Chander Aggarwal, (1979) 2 SCC 305 : AIR 1979 SC 87, Rai Kapoor v. State (Delhi Administration)1980 Cri. L.J. 202, Krishnan v. Krishnaveni and Kailash Verma v. Punjab State Civil Supplies Corporation (2005) 2 SCC 571.”
(emphasis supplied)

9. The settled legal position, thus, is that while a second revision is barred under Section 397(3) CrPC, the inherent power of the High Court under Section 482 CrPC can be exercised, though sparingly, only in cases where a special case is made out for such interference, which in turn will inevitably depend on the facts and circumstances of each case.

10. Now turning to the facts of the present case, what transpires from the record is that PW-9 was an Expert Witness who had submitted his FSL report as a Senior Scientific Officer in the year 1999 and was admittedly deposing before the learned Trial Court after a period of almost 9 years. Even though it is correct that after being examined in-chief and cross-examined by the learned counsel for the petitioner/accused, PW 9 had been discharged by the learned Trial Court,

he subsequently on his own remembered some mistake in his testimony and had, therefore, appeared before the learned Trial Court on the very same day with a request to record his additional statement, which was allowed without any application being moved either by the learned Public Prosecutor or by any of the accused. However, the basic fact which remains uncontroverted is that the learned counsel for the petitioner/accused was granted an adequate opportunity to cross-examine PW 9, which opportunity is still available to the petitioner.

11. It is an undisputed position that under Section 311 CrPC, the learned Trial Court had ample power to recall and re-examine PW 9 and, therefore, in my considered view once the aforesaid witness had approached the Trial Court again with the submission that he had deposed in a manner contrary to his report exhibited as Ex.PW 9/A, the learned Trial Court could not have merely ignored or declined the said request. In fact, by permitting PW 9 to be re-examined, the learned Trial Court had acted in the furtherance of the cause of justice and no prejudice was caused to the petitioner as he had fairly been granted a further opportunity to cross-examine the said witness. There is no miscarriage of justice or illegality in the approach adopted by the Courts below.

12. In the light of the aforesaid legal position, when the facts of the present case are examined, I am unable to persuade myself to exercise the extraordinary jurisdiction under Section 482 CrPC and interfere with the order dated 11.05.2018 passed by the learned ASJ. For the aforesaid

reasons, the petition being meritless is dismissed alongwith the pending application.

(REKHA PALLI)
JUDGE

OCTOBER 29, 2018

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