

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

RESERVED ON : 16th JANUARY, 2018

DECIDED ON : 26th FEBRUARY, 2018

+ **W.P.(CRL) 20/2015 & CrI.M.A. 59/2015 (Stay)**

INDER KUMAR Petitioner

Through: Mr. Alok Bhachawat, Advocate.

versus

STATE OF NCT OF DELHI Respondent

Through: Ms. Kamna Vohra, ASC for the State.

+ **W.P.(CRL) 21/2015 & CrI.M.A. 64/2015 (Stay)**

INDER KUMAR Petitioner

Through: Mr. Alok Bhachawat, Advocate.

versus

STATE OF NCT OF DELHI & ANR Respondents

Through: Ms. Kamna Vohra, ASC for the State.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Present writ petitions have been preferred by the petitioner under Article 226/227 of the Constitution of India read with Section 482 Cr.P.C. to challenge the legality and correctness of orders dated 21.08.2014 and 14.10.2014 respectively whereby costs ₹3,500/- were imposed upon him while allowing the application under Section 311 Cr.P.C. to recall PW-5 (Radhey Shyam). Prayer was also made to expunge the deprecatory remarks recorded in the impugned orders qua him.

2. I have heard the learned counsel for the parties and have examined the file. The petitioner was posted as Addl. Public Prosecutor in the Court concerned during the relevant period. Cases vide FIRs No.523/2013 registered under Sections 397/411/34 'State vs. Rakesh @ Dhillu & Ors.' PS Sunlight Colony and 141/2013 registered under Sections 394/397/34 IPC 'State vs. Bal Ram & Anr.' PS Greater Kailash were listed for hearing before the said Court. An application under Section 311 Cr.P.C. was filed for recall of PW-5 (Radhey Shyam). By an order dated 14.10.2014, the application was allowed and PW-5 (Radhey Shyam) was recalled for examination. However, costs ₹3,500/- were imposed and ordered to be recovered from Mr. Inder Kumar, the learned Addl. Public Prosecutor. The accused persons therein were acquitted by a judgment dated 21.08.2014. Certain observations qua the work and conduct of the petitioner were made. Being aggrieved, the petitioner has filed the instant petitions.

3. From perusal of the file, it reveals that on 27.05.2014, the petitioner had examined PW-6 (Sehzadi), PW-7 (Radish Ahmad), PW-8 (Salman), PW-9 (SI Kumar Santosh) and PW-10 (Rajeev Sharda). Examination-in-chief of PW-5 (Radhey Shyam) was deferred for want of case property i.e. clothes. Case was adjourned to 24.07.2014 and PW-5 (Radhey Shyam) was bound down for the said date. On 24.07.2014, the matter was taken up at 04.40 p.m. and PW-11 was examined. PW-12 was partly examined and further examination was deferred. The matter was adjourned to 25.07.2014 and it was taken up at 04.00 p.m. that day; PW-12 was partly examined. Case was

adjourned for 07.08.2014. Certain witnesses were examined on 07.08.2014 and the matter was listed for prosecution evidence for 16.08.2014. On that day, it was informed by the learned Addl. Public Prosecutor that no more PW was to be examined. Case was listed for statement of the accused on 03.09.2014. On 11.09.2014, the instant application was filed to recall PW-5 (Radhey Shyam) as his examination could not be completed. By an order dated 14.10.2014, the application was allowed.

4. Imposition of costs of ₹3,500/- to recall PW-5 (Radhey Shyam) and its recovery from the salary of the previous Addl. Public Prosecutor i.e. the present petitioner, is not appropriate and cannot be justified. At the time of disposal of the application under Section 311 Cr.P.C., the petitioner was not even the Public Prosecutor in the said Court. For the lapse of the Public Prosecutor (if any) in conducting the judicial proceedings, the proper authority was the Directorate of Prosecution. As observed above, PW-5 (Radhey Shyam) was bound down to appear on a specific date. The Trial Court itself did not note as to why PW-5 (Radhey Shyam) had not appeared and why no coercive process was issued to procure his appearance. If due to lapse or inadvertence, the statement of PW-5 (Radhey Shyam) could not be recorded, the prosecution was within its right to recall him. There was no inordinate delay in filing the application under Section 311 Cr.P.C. Moreover, the costs (if any) could have been upon the State. Its recovery from the salary of the petitioner without establishing his negligence and without affording him reasonable opportunity of hearing cannot be sustained.

5. The learned Presiding Officer while acquitting the accused persons therein by a judgment dated 21.08.2014 passed certain remarks against the Addl. Public Prosecutor, who was again the Public Prosecutor in the said Court that time. The material prosecution witnesses had turned hostile and were cross-examined by the learned Addl. Public Prosecutor after seeking Court's permission. The Trial Court did not agree with certain suggestions put by the learned Addl. Public Prosecutor to the said witnesses in the cross-examination and was of the view that it spoiled the case of the prosecution. The evidence as a whole is to be evaluated to record acquittal or conviction. Merely because certain suggestions were given by the learned Addl. Public Prosecutor as per his wisdom in the cross-examination to the witnesses which the learned Presiding Order considered irrelevant, did not call for any adverse remarks regarding his work and conduct.

6. It is relevant to note that the petitioner had lodged a complaint against learned Presiding Officer to the Learned District & Sessions Judge, Delhi on 29.08.2014. It is further relevant to note that in other matters also which were pending before this Court, the petitioner was burdened with costs to be recovered from his salary. While disposing CrI.M.C. 2082/2015, the orders dated 15.04.2014, 30.09.2014 and 02.12.2014 qua the petitioner were set aside on 21.07.2015. It was noted therein that the learned judge became personal due to certain reasons which were not necessary to be mentioned in the said order.

7. In view of the above discussion, the impugned orders cannot be sustained and are set aside.

8. Observations regarding the work and conduct of the petitioner in the impugned judgment also stand deleted and expunged.

9. The writ petitions stand disposed of. Pending applications also stand disposed of.

(S.P.GARG)
JUDGE

FEBRUARY 26, 2018 / tr

