

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

+ **CRL.M.C. 6301/2019**

Date of Decision: 06.12.2019

IN THE MATTER OF:

RAVI

..... Petitioner

Through: Mr. Ansar Ahmad Chaudhary,
Advocate

Versus

STATE OF DELHI

..... Respondent

Through: Ms. Radhika Kolluru, APP for State
with SI Dheer Singh, P.S. Farsh Bazar

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

MANOJ KUMAR OHRI, J (ORAL)

CRL.M.A. 42084/2019 (Exemption)

1. Allowed, subject to all just exceptions.
2. The application stands disposed of.

CRL.M.C. 6301/2019

1. The present petition has been filed under Section 482 Cr.P.C. seeking setting aside/recall of the impugned order dated 12.02.2019 passed by the learned ASJ/Special Judge (NDPS), Karkardooma Courts, whereby the petitioner's application to recall the witness *Chetan Sharma* (PW-6) for cross examination in FIR No. 183/2011 under Section 307 IPC & Sections 25/25(54)/59/307 of Arms Act, 1959 P.S. Farsh Bazar, Delhi was dismissed.

2. Learned counsel for the petitioner submits that the aforesaid witness could not be cross-examined on 18.03.2016, as counsel for the petitioner was not available on that day. An application under Section 311 Cr.P.C. was filed, which was allowed, subject to deposit of cost of Rs.10,000/-. The petitioner/accused on account of his financial position could not deposit the cost and moved an application for waiving the costs of Rs.10,000/-. The said application however, came to be dismissed vide order dated 20.01.2017. A subsequent application was moved to seek recall of the aforesaid witness, came to be dismissed by the impugned order passed on 12.02.2019 on the ground that the petitioner on the previous occasion failed to deposit the aforesaid cost.

3. Learned APP for the State submits that the case is at the stage of trial and the Investigating Officer is yet to be examined.

4. The scope of Section 311 Cr.PC was considered by the Supreme Court in the case of P.Sanjeeva Rao v. State of A.P. reported as **(2012) 7 SCC 56**, wherein it was held as under:-

“20. Grant of fairest opportunity to the accused to prove his innocence was the object of every fair trial, observed this Court in Hoffman Andreas v. Inspector of Customs, Amritsar, (2000) 10 SCC 430. The following passage is in this regard apposite:

“6. ...In such circumstances, if the new Counsel thought to have the material witnesses further examined, the Court could adopt latitude and a liberal view in the interest of justice, particularly when the Court has unbridled powers in the matter as enshrined in Section 311 of the Code. After all the

trial is basically for the prisoners and courts should afford the opportunity to them in the fairest manner possible.”

(emphasis supplied)

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23. We are conscious of the fact that recall of the witnesses is being directed nearly four years after they were examined in chief about an incident that is nearly seven years old..... we are of the opinion that on a parity of reasoning and looking to the consequences of denial of opportunity to cross-examine the witnesses, we would prefer to err in favour of the appellant getting an opportunity rather than protecting the prosecution against a possible prejudice at his cost. Fairness of the trial is a virtue that is sacrosanct in our judicial system and no price is too heavy to protect that virtue. A possible prejudice to prosecution is not even a price, leave alone one that would justify denial of a fair opportunity to the accused to defend himself.”

5. In view of the aforesaid enunciation of law and the fact that the aforesaid witness *Chetan Sharma* is the complainant and the injured in the present case, whose cross-examination would be necessary for the just decision of the case, the petition is allowed, subject to payment of costs of Rs.5,000/- to be deposited with *Delhi High Court Legal Services Committee*.

6. It is directed that the trial court shall summon the aforesaid witness for one date only and on which date learned counsel for the petitioner shall examine the said witness. The petitioner will not take any adjournment in this regard.

7. With the above observations, the present petition is disposed of.

(MANOJ KUMAR OHRI)
JUDGE

DECEMBER 06, 2019/p'ma

