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

+ CRL.M.C. 282/2019 and CrI.M.A.1196/2019

SH. RAM DUTT CHATURVEDI Petitioner

Through: Mr. Ravikant Singh, Advocate

versus

STATE Respondent

Through: Mr. Sanjeev Sabharwal, APP for the
State

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

% **20.03.2019**

The petitioner was sent up for trial on the basis of evidence gathered during investigation into the first information report (FIR) No.516/2014 of Police Station Paschim Vihar, submitted by report (charge sheet) under Section 173 of the Code of Criminal Procedure, 1973 (Cr.P.C.) on 18.04.2015. The Metropolitan Magistrate having taken cognizance and secured the presence of the petitioner on the process issued framed charges for offence under Section 354/354-A of Indian Penal Code, 1860 (IPC) on 17.02.2016, the gravamen relating to an incident that had statedly occurred on 06.07.2014 at about 4:30 p.m. at Kali Mata Mandir, Rohtak Road, Peeragarhi Chowk, Delhi, the prosecutrix being examined in its wake as witness for prosecution (PW-1). On conclusion of the trial he was held guilty and convicted, as charged, and awarded substantive sentence by order dated 07.08.2018, the same being presently under challenge before the court of sessions by Criminal Appeal No.171/2018.

At the hearing on the appeal, the petitioner moved an application under Section 391 Cr.P.C. seeking another opportunity to lead evidence. The said prayer was made with reference to certain complaints which the petitioner had earlier lodged with the local police regarding threats, *inter alia*, by certain public persons and police officials to falsely implicate him particularly in a case involving a girl, reliance being placed on such complaints lodged on 11.01.2014 with the SHO of Police Station Paschim Vihar, ACP Punjabi Bagh and DCP Rajouri Garden, besides one more complaint dated 21.04.2014 presented to DCP Rajouri Garden. The additional sessions judge has rejected the said prayer setting out his reasons thus:-

“9. Here in the present case the appellant was examined u/s 313 Cr.P.C. and an opportunity was given to him whether he want to lead evidence or not. The appellant/accused was having knowledge of the complaint allegedly being made by him when he was examined personally u/s. 313 Cr.P.C. but he has not chosen to disclose to the court any such evidence. It seems that it is afterthought. So far as the submission of Ld. counsel for the appellant is concerned that previous counsel has not properly guided the appellant but this plea is not maintainable because it is never ending process. Suppose if any fact is not argued in the main appeal by the present advocate then the present counsel will be also under fire. The plea taken by the appellant is also not sustainable because the appellant was personally examined u/s 313 Cr.P.C. and at that time he has not disclosed the same. In view of the judgment supra the provision u/s 391 Cr.P.C. cannot be exercised to fill up lacunae and this provision can also be used in exceptional cases. So in the given circumstances, I found no merit in the instant application, the same is accordingly dismissed.”

The trial court record has been called for and perused. Though it does appear that when he was examined under Section 313 Cr.P.C., the petitioner had indicated that he did not want to lead any evidence in defence, noticeably earlier during cross examination of PW-1 he had suggested that a false case had been set up against him at the instance of the police officials. From the copies of the aforementioned complaints, which seem to bear endorsements of receipt, it appears that there is possibility of the presence of the petitioner as a priest in the afore-mentioned temple being the cause of some dispute in the area which had been brewing in the run up to the filing of the FIR.

The purpose of trial is a quest for the truth. The petitioner seems to have missed the opportunity during trial before the Metropolitan Magistrate to adduce evidence in defence. But then, he is blaming his then defence counsel for the default, his explanation being that requisite material showing motive to falsely implicate though available with counsel was not placed before the trial court properly, this leading to erroneous view being taken on one-sided material.

The observation of the first appellate court that such plea was “*not maintainable*” because it would render it to be a “*never ending process*” is clearly a mis-directed approach. The material sought to be placed on record as defence evidence, though belatedly, seems to be relevant and thus, in all fairness, this court deems it proper to afford to the petitioner an opportunity to adduce it as evidence at the stage of appeal in accordance with law.

For the foregoing reasons, the impugned order is set aside. The prayer under Section 391 Cr.P.C. is allowed. The first appellate court will

pass necessary orders so that the petitioner can lead evidence on above lines in accordance with law.

The appeal shall be taken up for hearing and decision only after such opportunity as above has been afforded.

The petition and the accompanying application are disposed of in above terms.

The trial court record shall be returned forthwith.

Dasti.

R.K.GAUBA, J.

MARCH 20, 2019

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