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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.REV.P. 584/2019**
OM PRAKASH @ OMI Petitioner
Through: **Mr. Thokchom IBS, Advocate**

versus

THE STATE OF NCT OF DELHI & ORS Respondents
Through: **Mr. Ashish Dutta, APP with SI**
Karamveer Singh,
AHTU/Crime Branch

CORAM:
HON'BLE MR. JUSTICE CHANDER SHEKHAR

% **ORDER**
27.05.2019

CRL.M.A10534/2019

Allowed, subject to all just exceptions. The application is disposed of.

CRL.REV.P. 584/2019

1. This criminal revision petition assails the order dated 13.2.2019 and the subsequent order dated 1.4.2019 (hereinafter to be referred as 'the impugned orders') passed by the learned Additional Sessions Judge, Patiala House Courts (hereinafter to be referred as 'the Trial Court'). By order dated 13.2.2019, the application filed on behalf of the State for taking the statement of the victim dated 6.1.2018, on record was allowed by the Trial Court. Further, by order dated 1.4.2019, the Trial Court

has dismissed the application filed by the petitioner with regard to objections to the statement filed by the victim on 13.12.2018 and stay of recording of the statement before the Court.

2. Brief facts of the case are that an FIR No. 2/2018 was registered against the petitioner under Sections 364, 201, 120 B, 34 of the Indian Penal Code, 1860 at Police Station: Crime Branch and at present, the petitioner is facing trial before the Trial Court. During the evidence, the learned APP had filed an application for taking the statement of the victim- Apoorva Mittal on record, which was allowed by the Trial Court vide the impugned order dated 13.2.2019 subject to just exceptions and objections, permitting the counsel for the petitioner to raise objections during proceedings or examination of witness. Aggrieved, the petitioner filed an application with regards to objections to the statement filed by the victim and stay of recording of the statement before the Trial Court. The Trial Court vide the impugned order dated 1.4.2019 dismissed the application of the petitioner thereby stating that the said objections have already been decided by the predecessor bench of the Trial Court.

3. Aggrieved, the petitioner has filed the present revision petition.

4. Learned counsel for the petitioner submitted that the impugned orders dated 13.2.2019 and 1.4.2019 are bad in law and the Trial Court ought not to have taken the statement of the victim on record.

5. *Per Contra*, the learned APP for the State submitted that the Trial Court has rightly allowed the application of the victim as per law and no prejudice would be caused to the petitioner by bringing on record the said statement of the victim.

6. At the outset, I would like to reproduce the relevant portion of the order dated 13.2.2019 which reads as under:

“Subject to all just exceptions and objections, which may taken by learned counsels in proceedings or examination of witness, the application is allowed. The document may be filed by the prosecution. The documents filed.”

7. I would also like to reproduce the relevant portion of the order dated 1.4.2019 which reads as under:

“ Perusal of the record reveals that the said objections have already been decided by my learned predecessor vide order dated 13.02.2019, on an application moved on behalf of the learned Additional PP for taking the statement of victim Apoorva Mittal on record. The application was allowed subject to just exceptions and objections, permitting to the learned defence counsel to raise such objections during cross examination, if any. Thus, the present application accordingly stands disposed of as dismissed, in terms of the said order.”

8. It is no longer *res integra* and is now a settled law that a document can be produced or relied upon by the prosecution at a later stage during the course of the trial before the Sessions Court. Neither in Section 173 nor in any other provision of the Code of Criminal Procedure, 1973 (‘Cr.P.C.’), there is any

disabling provision which prevents the prosecution from filing additional documents. What value is to be attached to such additional documents which are produced at a late stage, will always depend upon the peculiar circumstances of each and every case. There cannot be any straightjacket formula for this purpose. Thus, in the course of trial, if the prosecution thinks that it is necessary to file additional documents on which it proposes to rely, the law does not prevent it from filing the same. Even otherwise, the provision of Section 311 Cr.P.C. permits the calling of a witness and production of any document at any stage as long as the same is before the pronouncement, subject to the condition that the said document should be relevant and essential for the just decision of the case. Wide power has been conferred to meet the ends of justice. If the Court comes to the conclusion that the same is essential, the statute makes it mandatory on the Court to summon such a witness. Reliance can be placed upon the judgments in the cases of *State of Gujarat v. Ashokkumar Lavjiram Joshi*, 2018 GLH (2) 166; *In Re: Shantilal and Ors.*, AIR 1959 MP 290; *Public Prosecutor v. C.S. Pachiappa Mudaliar*, AIR 1958 Mad 295 and *Salman Khan v. State of Rajasthan*, S.B. Criminal Misc. Petition No.606/2015, passed on 10.04.2015 by the Rajasthan High Court.

9. The Court has also been empowered under Section 91 Cr.P.C. to issue summons for production of documents, therefore, there can be no bar for the Court to permit the

prosecution to produce the documents which are necessary for the proper disposal of the case irrespective of the fact that it was not filed along with the charge-sheet.

10. However, so far the powers of the Magistrate are concerned, Section 242(3) Cr.P.C. is wide enough and mandates the Magistrate to take all such evidence as may be produced in support of the prosecution. The use of the language "all such evidence" in sub-section (3) of Section 242 means that the Court is required to take or receive all such evidence which the prosecution may produce in support of its case. Having regard to the wide language used in the section, the expression "all such evidence" cannot be given a restrictive meaning so as to hold that only such evidence which relates to those persons who have been examined by the police or only the documents collected during investigation could be produced before the Court. To read the section in such a restricted manner would amount to reading into the sub-section, something which is not there. Even otherwise "evidence" in strict sense means oral and documentary evidence. As defined in Section 3 of the Evidence Act "Evidence" means and includes-(1) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry, such statements are called oral evidence; (2) (all documents including electronic records produced for the inspection of the Court) such documents are called documentary evidence. Reliance can be placed on the judgments in cases of *Prakash Chand Baid v.*

State of Rajasthan & Anr., S.B. Criminal Misc. Petition No.851/2014 passed on 05.06.2015 by the Rajasthan High Court and *B.L. Udaykumar and Ors. V. The State of Karnataka*, 2018 CriLJ 3925.

11. So far as the order dated 13.2.2019 passed by the Trial Court is concerned, the application for taking the statement of the victim was allowed to be taken on record but the same is subject to all just exceptions and objections which may be raised by the petitioner during cross-examination before the Trial Court. The petitioner can raise objections to the same at the time of proving of the aforesaid document, which objections shall be decided by the Trial Court at the time of pronouncement of the judgment.

12. In view of the aforesaid discussion as well as the law laid down in this regard, I do not find any flaw or infirmity in the impugned orders dated 13.2.2019 and 1.4.2019 passed by the Trial Court. There is no merit in the present petition. The same is accordingly dismissed.

CHANDER SHEKHAR, J

MAY 27, 2019

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