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

CRL.REV.P. 722/2018 & Crl. M. A. 30623/2018 (stay)

Date of Decision: 20.12.2019

IN THE MATTER OF:

SUMIT KUMAR DEDHA & ORS.Petitioners

Through: Mr. Hemant Gulati and Mr. Ghanshyam
Kaushik, Advocates.

Versus

STATE, NCT OF DELHIRespondent

Through: Dr. M. P. Singh, APP for State with
Inspector Sarita from PS-New Ashok
Nagar.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

MANOJ KUMAR OHRI, J. (ORAL)

Crl. M. A. 30622/2018 (delay)

For the reasons stated in the application, the application is allowed and delay of 123 days in filing the present criminal revision petition is allowed.

CRL.REV.P. 722/2018

1. The present revision petition impugns the order dated 22.01.2018 passed by Addl. Sessions Judge (East) in FIR No.1564/2014, registered under Sections 498A/304B/406/34 IPC at Police Station New Ashok Nagar.
2. The petitioner/accused had moved an application under Section 311 Cr.P.C. before the trial court for recalling Manmohan Singh (PW-2), father of the deceased, which came to be dismissed by the impugned order.
3. Learned counsel for the petitioner submits that prosecution has cited Manmohan Singh to prove the demand of Rs.5 lacs and a Scorpio car. He further submits that although the witness was cross-examined however, certain aspects with respect to the aforesaid demands were not put to the witness. On being asked, learned counsel for the petitioner submitted that on one hand it has come in the testimony that Scorpio car was given at the time of marriage whereas on the other hand, the witness has stated that he received a call from the deceased where demand of Scorpio car and Rs.5 lac by the petitioner was conveyed to him.
4. Learned APP for the State has opposed the application and submitted that the present application is filed to delay the trial as most of the witnesses have been examined.
5. I have heard learned counsel for the parties and have gone through the case records.
6. The incident in the present case relates to the year 2014. Manmohan Singh, father of the deceased was examined on 16.03.2016 and cross-

examined and discharged on the same day. The testimony of the witness shows that he had given one Scorpio car at the time of marriage of his daughter and there was a demand for new Scorpio car as the earlier one was sold by the petitioner. The cross-examination is a detailed cross-examination where suggestion about the Scorpio car had been given.

7. The Trial Court in the impugned order has observed that on account of change of counsel the witness cannot be permitted to be recalled.

8. In State v. Shiv Kumar Yadav, reported as **2016 2 SCC 402**, it was held as under:

“28. It will also be pertinent to mention that power of judicial superintendence under Article 227 of the Constitution and under Section 482 CrPC has to be exercised sparingly when there is patent error or gross injustice in the view taken by a subordinate court. A finding to this effect has to be supported by reasons. In the present case, the High Court has allowed the prayer of the accused, even while finding no error in the view taken by the trial court, merely by saying that exercise of power was required for granting fair and proper opportunity to the accused. No reasons have been recorded in support of this observation. On the contrary, the view taken by the trial court rejecting the stand of the accused has been affirmed. Thus, the conclusion appears to be inconsistent with the reasons in the impugned order.

29. We may now sum up our reasons for disapproving the view of the High Court in the present case:

(i) The trial court and the High Court held that the accused had appointed counsel of his choice. He was facing trial in other cases also. The earlier counsel were given due opportunity and had duly conducted cross-examination. They were under no handicap;

(ii) *No finding could be recorded that the counsel appointed by the accused were incompetent particularly at the back of such counsel;*

(iii) *Expeditious trial in a heinous offence as is alleged in the present case is in the interests of justice;*

(iv) *The trial court as well as the High Court rejected the reasons for recall of the witnesses;*

(v) *The Court has to keep in mind not only the need for giving fair opportunity to the accused but also the need for ensuring that the victim of the crime is not unduly harassed;*

(vi) *Mere fact that the accused was in custody and that he will suffer by the delay could be no consideration for allowing recall of witnesses, particularly at the fag end of the trial;*

(vii) *Mere change of counsel cannot be ground to recall the witnesses;*

(viii) *There is no basis for holding that any prejudice will be caused to the accused unless the witnesses are recalled;*

(ix) *The High Court has not rejected the reasons given by the trial court nor given any justification for permitting recall of the witnesses except for making general observations that recall was necessary for ensuring fair trial. This observation is contrary to the reasoning of the High Court in dealing with the grounds for recall i.e. denial of fair opportunity on account of incompetence of earlier counsel or on account of expeditious proceedings;*

(x) *There is neither any patent error in the approach adopted by the trial court rejecting the prayer for recall nor any clear injustice if such prayer is not granted.*

9. The witness was examined, cross-examined and discharged on 16.03.2016. The cross-examination of the witness was conducted in detail. The reason canvassed for recall, as discussed in the preceding para, also

does not have any basis. The only reason apparent is the change of counsel which cannot be a ground for recalling a witness.

10. I find no ground to interfere with the order passed by the Trial Court and accordingly the present petition is dismissed alongwith pending application.

(MANOJ KUMAR OHRI)
JUDGE

DECEMBER 20, 2019/ssc

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