

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

Date of Decision: 11.02.2020

+ CRL.REV.P. 812/2018 and CRL.M.A. 32415/2018 (stay)

IN THE MATTER OF:

SUNITA VERMA & ORS Petitioners
Through: Mr. Lakshay Mangla, Advocate

Versus

PERMANAND VERMA Respondent
Through: Ms. Shivangi Nanda and Ms. Sajni
Kachwaha, Advocates

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

MANOJ KUMAR OHRI, J (ORAL)

1. The present petition is directed against the order dated 04.09.2018 vide which the petitioner's application seeking recall of the order dated 13.03.2018 passed by the Principal Judge (South) Family Courts, Saket, New Delhi was dismissed.
2. The Family Court vide order dated 13.03.2018 closed the petitioner's evidence and listed the matter for defence evidence. On 04.09.2018, while dismissing the petitioner's application for recall of the order dated 13.03.2018, the opportunity to cross-examine the respondent, was also closed.
3. The present proceedings arise out of a complaint case filed under Section 125 Cr.PC for grant of maintenance by the petitioner/wife. As per

the facts of the case, the petitioner got married to the respondent on 04.12.2005 as per Hindu Rites and Ceremonies. The petitioner, having no source of income, is presently residing along with her three children in Mathura and is totally dependent on her mother and brother. The petitioner has also filed a complaint which was registered as FIR No.12/2013 under Sections 498A/406 at P.S. CAW Cell, Nanak Pura, Delhi as well as a complaint case under Section 12 of the DV Act.

4. Learned counsel for the petitioner submitted that the petitioner has filed evidence by way of affidavit on 04.05.2013 and the matter was delayed by the respondent on one pretext or the other. The matter was also referred for settlement and on 02.04.2016, an MOU was prepared, as per which, the arrears of maintenance of Rs.2,40,000/ were adjusted as the respondent executed a Sale Deed of a plot of land in Aligarh in the name of petitioner No.1. The petitioner along with her children started living with the respondent, however, thereafter she was beaten up by the respondent and an FIR under Sections 323/504/506 was registered. The same is reflected in the order dated 23.08.2016 passed by the Principal Judge, Family Courts. On the said date, the petitioner was directed to file evidence by way of affidavit as well as list of witnesses and the matter was listed for PE on 07.02.2017. It appears that the said directions to the petitioner to file affidavit by way of evidence were passed inadvertently as the petitioner's affidavit by way of evidence already stood filed on 04.05.2013. On 17.11.2017, the Principal Judge, Family Courts granted last opportunity to the petitioner to file her evidence and eventually on the next date, i.e., on 13.03.2018, in absence of the petitioner and her counsel, the petitioner's evidence was closed. It is relevant that on the said date, the petitioner's mother was present and sought

an adjournment on the ground that the petitioner could not come on account of exams of her children. Apparently, the petitioner's application to recall the order was also dismissed for want of any material on record in this regard.

5. Learned counsel for the respondent, on the other hand, has supported the impugned order and submitted that the petitioner has delayed the proceedings before the Family Court for one reason or the other.

6. A fair trial is the hallmark of criminal procedure. It entails not only the rights of the victim but also the interest of the accused and the society. It is the duty of the criminal court to ensure that fair and proper opportunity is granted to the accused for the just decision of the case. Adducing evidence by the accused in support of his defence is a valuable right.

7. In Natasha Singh v. CBI reported as **(2013) 5 SCC 741**, while referring to its earlier decisions in Mir Mohd. Omar v. State of W.B. reported as **(1989) 4 SCC 436**, Mohanlal Shamji Soni v. Union of India reported as **AIR 1991 SC 1346**, Rajeswar Prasad Misra v. State of W.B. reported as **AIR 1965 SC 1887**, Rajendra Prasad v. Narcotic Cell reported as **(1999) 6 SCC 110**, P. Sanjeeva Rao v. State of Andhra Pradesh reported as **(2012) 7 SCC 56**, T. Nagappa v. Y.R. Muralidhar reported as **(2008) 5 SCC 633**, the Supreme Court held as under:-

"8. Section 311 Cr.P.C. empowers the court to summon a material witness, or to examine a person present at "any stage" of "any enquiry", or "trial", or "any other proceedings" under Cr.P.C., or to summon any person as a witness, or to recall and re-examine any person who has already been examined if his evidence appears to it, to be essential to the arrival of a just decision of the case. Undoubtedly, Cr.P.C. has conferred a very wide discretionary power upon the court in this respect, but such

a discretion is to be exercised judiciously and not arbitrarily. The power of the court in this context is very wide, and in exercise of the same, it may summon any person as a witness at any stage of the trial, or other proceedings. The court is competent to exercise such power even suo motu if no such application has been filed by either of the parties. However, the court must satisfy itself, that it was in fact essential to examine such a witness, or to recall him for further examination in order to arrive at a just decision of the case.

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15. The scope and object of the provision is to enable the court to determine the truth and to render a just decision after discovering all relevant facts and obtaining proper proof of such facts, to arrive at a just decision of the case. Power must be exercised judiciously and not capriciously or arbitrarily, as any improper or capricious exercise of such power may lead to undesirable results. An application under Section 311 Cr.P.C. must not be allowed only to fill up a lacuna in the case of the prosecution, or of the defence, or to the disadvantage of the accused, or to cause serious prejudice to the defence of the accused, or to give an unfair advantage to the opposite party. Further, the additional evidence must not be received as a disguise for retrial, or to change the nature of the case against either of the parties. Such a power must be exercised, provided that the evidence that is likely to be tendered by a witness, is germane to the issue involved. An opportunity of rebuttal however, must be given to the other party. The power conferred under Section 311 Cr.P.C. must therefore, be invoked by the court only in order to meet the ends of justice, for strong and valid reasons, and the same must be exercised with great caution and circumspection. The very use of words such as "any court", "at any stage", or "or any enquiry, trial or other proceedings", "any person" and "any such person" clearly spells out that the provisions of this section have been expressed in the widest possible terms, and do not limit the discretion of the court in any way. There is thus no escape if the fresh evidence to be obtained

is essential to the just decision of the case. The determinative factor should therefore be, whether the summoning/recalling of the said witness is in fact, essential to the just decision of the case.

16. Fair trial is the main object of criminal procedure, and it is the duty of the court to ensure that such fairness is not hampered or threatened in any manner. Fair trial entails the interests of the accused, the victim and of the society, and therefore, fair trial includes the grant of fair and proper opportunities to the person concerned, and the same must be ensured as this is a constitutional, as well as a human right. Thus, under no circumstances can a person's right to fair trial be jeopardised. Adducing evidence in support of the defence is a valuable right. Denial of such right would amount to the denial of a fair trial. Thus, it is essential that the rules of procedure that have been designed to ensure justice are scrupulously followed, and the court must be zealous in ensuring that there is no breach of the same.”

8. Admittedly, the petitioner is a resident of Mathura and is looking after her three children. The petitioner has been present before the Family Court on all the occasions. The petitioner's affidavit by way of evidence is already on record since the year 2013. The matter was referred for settlement in pursuance to which the petitioner joined the company of her husband but later, on account of the alleged behaviour of the respondent, the petitioner along with her children started living separately. The Family Court ought to have granted one opportunity to lead her evidence as well as to cross-examine the respondent witness. The impugned orders dated 13.03.2018 and 04.09.2018 are set aside and the present petition stands allowed. It is however, made clear that the petitioner will not seek any adjournment and shall file her list of witnesses, if any. The respondent shall be at liberty to

cross-examine the petitioner and her witnesses. The petitioner shall also be permitted to cross-examine the respondent witness.

9. The petition alongwith the pending application stands disposed of in the above terms.

DASTI.

**MANOJ KUMAR OHRI
(JUDGE)**

FEBRUARY 11, 2020

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