

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**
CRL.M.C. 2096/2021 and CRL.M.A. 14098/2021

Date of decision : 15.11.2021

IN THE MATTER OF:

NIKESH BIDHURI AND ORS. Petitioners
Through: Mr. Rakesh Kumar and Mr. Parveen
Semwal, Advocates

Versus

STATE OF NCT OF DELHI AND ORS. Respondents
Through: Mr. Ashok Kumar Garg, APP for State
with SI Saurabh Parashar, PS Sarita Vihar
Mr. R.K. Sonkiya, Advocate for respondent No.2

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

MANOJ KUMAR OHRI, J. (ORAL)

1. The present petition has been filed under Section 482 Cr.P.C. on behalf of the petitioners assailing the order dated 27.03.2021 passed by the learned Metropolitan Magistrate, South East District, Saket Courts, New Delhi in Criminal Cases No. 105/2/2014 89820/2016 arising out of FIR No. 156/2014 registered under Sections 323/341/34 IPC at P.S. Sarita Vihar, Delhi, whereby application of respondent No. 2 under Section 311 Cr.P.C. to recall himself and depose was allowed.
2. Learned counsel for the petitioners submits that the impugned order does not show any application of mind and no reason has been assigned as to why the aforesaid application was allowed. It is further submitted that the relief sought in the application filed by respondent No. 2 is only an attempt to delay the proceedings.

3. Learned counsel for respondent No. 2 submits that respondent No. 2 had appeared as a witness before the lower Court, i.e. CW-1, however, the present petition has been filed seeking relief of recall for re-recording of his deposition, as at the time of earlier deposition, respondent No. 2 was under threat from the other side.

4. It has been informed that after completion of investigation, charge sheet in the instant case has been filed under Sections 323/325/341/34 IPC and the case is pending at the stage of final hearing.

5. I have heard learned counsels for the parties and perused the material placed on record.

6. It is a settled position of law that a reasoned order indicates application of mind by the concerned Judge, for the reasons, howsoever briefly stated, introduce clarity. Thus, reasons are the heart and soul of a judicial order. In furtherance of this spirit, the importance of citing reasons in a judicial order has been reiterated by Courts time and again. In State of Orissa v. Dhaniram Luhar reported as **(2004) 5 SCC 568**, the Supreme Court has observed as under:

“6. ...Reasons introduce clarity in an order. On plainest consideration of justice, the High Court ought to have set forth its reasons, howsoever brief in its order, indicative of an application of its mind; all the more when its order is amenable to further avenue of challenge. The absence of reasons has rendered the High Court order not sustainable. Similar view was expressed in State of U.P. v. Battan. About two decades back in State of Maharashtra v. Vithal Rao Pritirao Chawan the desirability of a speaking order while dealing with an application for grant of leave was highlighted. The requirement of indicating reasons in such cases has been judicially recognised as imperative. The view was reiterated in Jawahar Lal Singh v. Naresh Singh. Judicial discipline to abide by

declaration of law by this Court, cannot be forsaken, under any pretext by any authority or court, be it even the highest court in a State, oblivious to Article 141 of the Constitution.

7. Reason is the heartbeat of every conclusion, and without the same it becomes lifeless. (See *Raj Kishore Jha v. State of Bihar.*)

8. Even in respect of administrative orders Lord Denning, M.R. in *Breen v. Amalgamated Engg. Union* observed: “The giving of reasons is one of the fundamentals of good administration.” In *Alexander Machinery (Dudley) Ltd. v. Crabtree* it was observed: “Failure to give reasons amounts to denial of justice.” “Reasons are live links between the mind of the decision-taker to the controversy in question and the decision or conclusion arrived at.” Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the “inscrutable face of the sphinx”, it can, by its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system; reasons at least sufficient to indicate an application of mind to the matter before court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made; in other words, a speaking-out. The “inscrutable face of the sphinx” is ordinarily incongruous with a judicial or quasi-judicial performance.”

(emphasis added)

7. In Assistant Commissioner, Commercial Tax Department, Works Contract and Leasing, Kota v. Shukla and Brothers reported as **(2010) 4 SCC 785**, it has been further observed as follows:

“13. At the cost of repetition, we may notice, that this Court has consistently taken the view that recording of reasons is an

essential feature of dispensation of justice. A litigant who approaches the court with any grievance in accordance with law is entitled to know the reasons for grant or rejection of his prayer. Reasons are the soul of orders. Non-recording of reasons could lead to dual infirmities; firstly, it may cause prejudice to the affected party and secondly, more particularly, hamper the proper administration of justice. These principles are not only applicable to administrative or executive actions, but they apply with equal force and, in fact, with a greater degree of precision to judicial pronouncements. A judgment without reasons causes prejudice to the person against whom it is pronounced, as that litigant is unable to know the ground which weighed with the court in rejecting his claim and also causes impediments in his taking adequate and appropriate grounds before the higher court in the event of challenge to that judgment. Now, we may refer to certain judgments of this Court as well as of the High Courts which have taken this view.

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19. In the cases where the courts have not recorded reasons in the judgment, legality, propriety and correctness of the orders by the court of competent jurisdiction are challenged in the absence of proper discussion. The requirement of recording reasons is applicable with greater rigour to the judicial proceedings. The orders of the court must reflect what weighed with the court in granting or declining the relief claimed by the applicant.”

8. More recently, this view of the matter has been reiterated by the Supreme Court in Sebastiani Lakra and Others v. National Insurance Company Limited and Another reported as **(2019) 17 SCC 465**, where it was opined that:-

“2. ...Reasons are the heart and soul of any judicial pronouncement. No judicial order is complete without reasons and it is expected that every court which passes an order,

should give reasons for the same.”

9. In the present case, a perusal of the material placed on record would show that respondent No. 2 was examined as PW-5 on 17.09.2016 and cross-examined on the same day by the learned APP on the plea that he had turned hostile qua petitioner No. 3. He was further cross-examined on 18.03.2017 and 03.01.2018. Thereafter, the application under Section 311 Cr.P.C. came to be filed by respondent No. 2 and vide the impugned order, the learned Metropolitan Magistrate allowed the application in terms which comprise only of two sentences and are reproduced hereunder:-

*“Arguments on application u/s 311 Cr.P.C. heard.
The application is allowed. Witness PW5 Kasim be summoned
for 03.06.2021.*

10. This Court is of the opinion that an application under Section 311 Cr.P.C. is maintainable at any stage of the proceedings, but to allow such an application at the stage which the proceedings were at in the present case, cogent reasons needed to be stated as recalling of a witness was permitted. The learned Metropolitan Magistrate failed to record any reason whatsoever for arriving at the decision, making it difficult for this Court, besides the affected party, to understand what weighed with the Court while taking the particular view.

11. Keeping in view the aforesaid, the impugned order is set aside and the matter is remanded back to the concerned Court to decide the application afresh with reasons and in accordance with law.

12. It is informed that the next date before the Trial Court is 05.01.2022. In the facts and circumstances of the case, it is directed that the matter be listed on 29.11.2021.

13. With the above directions, the petition is disposed of alongwith the pending application.

(MANOJ KUMAR OHRI)
JUDGE

NOVEMBER 15, 2021

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Click here to check corrigendum, if any