



* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on : 12.04.2022

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Pronounced on : 12.07.2022

+ CRL.M.C. 1276/2021

DEVENDER @ MANU

.....Petitioner

Through: Mr. Bankim Kulshreshtha, Advocate.

Versus

THE STATE (NCT OF DELHI)

.....Respondent

Through: Dr. M.P. Singh, APP for the State.

CORAM:

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

JUDGMENT

RAJNISH BHATNAGAR, J.

1. By way of this petition filed under section 482 Cr.P.C read with Article 227 of the Constitution of India, the petitioner is seeking following reliefs:-

“a. command or direct, any appropriate order, direction against the impugned and set aside arbitrary order dated 08.02.2021 passed by Ld. Court presided by sh. Kuldeep Narayan, Additional Sessions Judge-04, in SC No. 105/2018, FIR No. 457/2017, U/s 302/307/34 IPC, P.S. GEETA Colony, East District, Karkardooma Courts, Delhi by partly allowing

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application U/s 311 Cr. P.C. and ignoring the guiding principles of criminal administration of justice.

b. Pass any such further order for direction as this Hon'ble Court may deem just and fit in the facts and circumstances of the case and in the interest of justice."

2. Heard. Records perused.

3. In the instant case, the petitioner is aggrieved by the order dated 08.02.2021 passed by learned ASJ. The brief history of the case has been captured in the following words in the order of the learned ASJ as under:

"Per contra, Id. Prosecutor while opposing the application submitted that all the afore-mentioned prosecution witnesses were duly examined and cross examined by the previous counsel for the accused Devender @ Monu and therefore, a change of new counsel cannot be said to give a fresh right to the accused for further cross-examination of the witnesses. Further the statements of all the Id. Counsels for the accused persons was recorded u/s 294 Cr.PC on 07.03.2019 as they did not dispute the genuineness of documents and accordingly the name of those witnesses were dropped from the list of witnesses. Hence, they cannot be summoned u/s 311 Cr.PC for their examination.

I have heard the submissions and perused the record carefully. I have also gone through the cited judgments.

As per record, PW1 Sunil Khera and PW2 Tejender Arora only deposed regarding identification of the dead body of the deceased and, therefore, are not material witnesses. They were also not cross-examined by the Id. Counsel for the accused persons despite opportunity available to them. Hence, there is no need to summon them. Even otherwise, the cross-examination of these two PWs cannot travel beyond the periphery of their examination in chief which the Id. Counsel



for the accused Devender @ Manu intends to do. The contention of the ld. Counsel in this regard is not meritorious.

PW3 Ashish Tyagi was cross-examined at length by Sh. Anil Kumar Saxena, adv. who earlier was representing accused Devender @ Monu. PW3 was also cross-examined at length by other counsel representing other accused persons.

*In these circumstances, I find merit in the contentions of the ld. Prosecutor that by a change of counsel, PW3 cannot be allowed to be subjected to cross examination again as there will not be an end to cross-examination In this manner as every new counsel engaged subsequently would like to cross-examine the witnesses once again. Therefore, in my considered opinion, PW1, PW2 and PW3 are not required to be summoned again for their further cross-examination.***

As far as testimony of PW6 Sh. Gaurav Sharma is concerned, a perusal of the same would reveal that he was also cross-examined at length by other counsel representing the other accused persons. However, Sh. S.B.Anand, adv. present on behalf of accused Devender @ Monu chose not to cross-examine PW6 despite opportunity available to him. PW6 is a material witness and for just and fair trial and to come to a just conclusion, in my considered opinion, there is no harm if one more opportunity be given to the accused Devender @ Monu for his cross-examination despite the fact that cross-examination conducted by the counsels for the other accused persons would be read in evidence for all the accused persons including accused Devender @ Monu.

Further, PW7 ASI Kanwar Pal and PW8 ASI Sonu Kaushik were examined by the prosecution to prove the PCR Form and preparation of site plan only. PW8 only was cross-examined by one counsel whereas the other counsel, including the counsel



for the accused Devender @ Monu chose not to cross examine PW7 and PW8. The testimony of both PW7 and PW8 are formal in nature. Therefore, there is no requirement to summon both the PW7 and PW8 also for their cross-examination.

As far as the prayer to summon PWs Dr. Ravi, Dr. Manish Kumar Gaur, Dr. Vinesh Kumar, Ms. Nabeela Wall, Ld. MM, Sh. Gaurav Saluja, Ms. Megha Arora, Sl George Abraham & Ms. Richa Parihar, Ld. MM is concerned, it suffice to note that vide order dated 07.03.2019, the joint statement of the Id. Counsels for the accused persons was recorded u/s 294 Cr.PC whereby they did not dispute the genuineness of the documents like MLC's, TIP proceedings, Superdarinama of the vehicles, certificate u/s 65 B of the Indian Evidence Act regarding PCR form and statements u/s 164 Cr.PC of the witnesses and accordingly the afore-mentioned witnesses were dropped from the list of witnesses."

4. It is evident from a cursory reading of the learned ASJ's order that the party is not required to demonstrate the authenticity because counsel may do so in accordance with Section 294 Cr.P.C. According to Section 294 Cr.P.C, some papers are exempted from formal proof requirements, and if the veracity of any such document is not contested, the document may be read in evidence without a witness to attest to the signer's signature. The proviso attached to Section 294 Cr.PC also states that the Court may demand proof of such signatures. It is therefore obvious that there was no question about the authenticity of those documents, but this does not indicate that the simple execution of those documents may be considered to be incriminating to the accused. Section 294 Cr.P.C. does little more than just to eliminate the need for formal proof of the papers. As already observed, those witnesses



have already been dropped from the list of witnesses and, therefore, there is no reasonable ground to summon them again.

5. It is sufficient to say that the learned Counsel appears to have neglected to properly examine the chargesheet in pertaining to the contention regarding summoning the individuals using mobile numbers 8383986431 and 9818660660 as mentioned in the chargesheet because, according to the list of witnesses filed alongside the chargesheet, PW Praveen Bansal is the user of mobile no. 8383986461 and PW Puneet Malik is the user of mobile no. 9818660660. Although the PCR Form dated 17.09.2017 correctly listed the mobile number +91-8383986431, the fact still remains that the correct mobile number can be corroborated during the testimony of the stated prosecution witnesses. As a result, I do not find any reason to interfere with the order of learned ASJ, especially when number of counsels have been given opportunities for examination and mere changing of counsel at every stage does not indicate that every counsel must be granted opportunity to examine or cross-examine the witnesses as per their whims and fancies and if the same is done, there would be no end to it.

6. Therefore, in view of the above, I do not find any merit in the petition, the same is accordingly dismissed.

RAJNISH BHATNAGAR, J

JULY 12, 2022