

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

% **Pronounced on: 6th May, 2022**

+ **CRL.REV.P. 212/2017**

SURYAKANT

.....Petitioner

Through: Mr. Sandeep Kumar and Mr. Sachin
Kumar, Advocates

Versus

STATE (GOVT OF NCT OF DELHI) & ORS Respondents

Through: Mr. G.M. Farooqui, APP for the
State with SI Rahul
Mr. Nitin Sehgal, Advocate for R-7
to R-12

+ **CRL.REV.P. 612/2017, CRL.M.A. 13389/2017**

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Versus

STATE (GOVT OF NCT OF DELHI) & ORS Respondents

Through: Mr. G.M. Farooqui, APP for the
State with SI Rahul
Mr. Nitin Sehgal, Advocate for R-2
to R-7

CORAM:

HON'BLE MS. JUSTICE ASHA MENON

J U D G M E N T

1. By this common judgment, I shall dispose of these two revision petitions since the two orders under challenge have been passed in the same case i.e., Sessions Case No.1086/2016 titled State v. Suresh Suneja

arising out of FIR No.787/2015 registered under Section 302 read with Section 201 IPC at P.S. Mandawali, Delhi.

2. It may be mentioned at this stage that the petitioner Suryakant is the brother of the deceased. He moved an application under Section 311 of the Code of Criminal Procedure, 1973 (for short, “Cr.P.C.”) for his examination as a prosecution witness. This application was dismissed by the then District and Sessions Judge (East), Karkardooma Courts, Delhi vide order dated 28th February, 2017. Thereupon, a revision petition being CRL.REV.P. 212/2017 was filed praying that the impugned order be set aside and the application be allowed with directions to the learned Trial Court to examine the petitioner as an eye-witness in the case.

3. Subsequently, on 23rd May, 2017, the accused moved an application under Section 294 Cr.P.C., on the basis of which examination of certain witnesses was sought to be dispensed with. The application has been placed on the record as Annexure P-10 to CRL.REV.P. 612/2017, which petition has been filed against the orders of the learned Trial Court dated 23rd May, 2017 allowing the application under Section 294 Cr.P.C., dismissing the objections raised by the present petitioner.

4. Mr. Sandeep Kumar, learned counsel for the petitioner, submitted that the petitioner was aggrieved by these orders since the eye-witness was not coming to testify and further, another witness had turned hostile, whereas despite the repeated efforts of the petitioner, the Investigating Officer (I.O.) had not included him as an eye-witness. It was submitted by the learned counsel that the PCR call had been made from the phone of the

petitioner, though the cell phone stood in the name of his sister. It was further claimed that even as per the testimony of Umesh Kumar, he had rushed to the house of the deceased and along with other brothers of the deceased, the petitioner had also rushed to the spot. Thus, the petitioner had been an eye-witness and his testimony was material to the trial.

5. Similarly, it was submitted by learned counsel for the petitioner that the learned Trial Court had erroneously allowed the application of the accused under Section 294 Cr.P.C. without examining the witnesses. It may be noted that the same argument of the petitioner having not been examined have been repeated even in the CRL.REV.P. 612/2017.

6. Mr. G.M. Farooqui, learned Additional Public Prosecutor for the State opposed these petitions submitting that the learned Trial Court in both instances had correctly followed the prescribed procedure, inasmuch as the application under Section 294 Cr.P.C. moved by the accused would be treated as an admission on their behalf of the various documents that have been mentioned in the application. Moreover, no witness had referred to the presence of the petitioner at the spot as an eye-witness and therefore, the present petitions were liable to be dismissed.

7. Mr. Nitin Sehgal, learned counsel for the accused, also opposed these petitions submitting that these petitions have been moved with ulterior purposes and with no locus to do so.

8. I have heard the submission of both counsel as well as the learned APP for the State and have perused the record. It is well settled that the revisional jurisdiction of the High Court cannot be equated with appellate

jurisdiction. In its revisional jurisdiction, the High Court can examine the records of any proceedings for satisfying itself as to the correctness, legality or propriety of any finding, sentence or order. There has to be perversity or unreasonableness, complete misreading of records leading to the court taking into consideration irrelevant material while ignoring relevant material, when alone the High Court would exercise its revisional jurisdiction to set aside such order/judgment.

9. There is absolutely no merit in the challenge to the orders of the learned Trial Court dated 23rd May, 2017 whereby the application of the accused under Section 294 Cr.P.C. has been allowed. Not one cogent reason has been either pleaded or argued to show any perversity in the order. The petition [CRL.Rev.P.612/2017] is totally a frivolous one, intended probably only to delay the trial. The petition thus merits dismissal with costs.

10. With regard to the order dated 28th February, 2017 of the learned Trial Court dismissing the application under Section 311 Cr.P.C., the case set up by the petitioner is that he was an eye-witness, and bases this claim on the testimony of Umesh Kumar (Annexure P-3 to CRL.REV.P. 612/2017). It is the submission of the learned counsel for the petitioner that in the statement, the said Umesh Kumar has related facts as an eye-witness when the incident occurred and that when due to blows, the deceased Rahul collapsed, he ran towards the house of the Rahul and described the circumstances to his brother Suryakant and came with the brothers of Rahul to the spot, where Rahul was found bleeding from the head and they took him to LBS Hospital in a serious condition. Thus, it is claimed by the

learned counsel that the petitioner was also an eye-witness and he too ought to be examined as an eye-witness.

11. On a reading of the statement of Umesh Kumar, on whose statement much emphasis is laid, it is clear that Suryakant had witnessed nothing and at the most, he had removed the injured with other brothers to the hospital. But, significantly, it is noted in the impugned order, that as per the MLC of the deceased, the victim was brought to the hospital by one Bhaskar and not by the petitioner. Therefore, to claim that he ought to be examined as an eye-witness is far-fetched.

12. It is the I.O. and the prosecution, who have the right to decide which of the witnesses have to be examined and in respect of which fact their testimony would be of assistance to the prosecution to prove the case against the accused. The petitioner has no vested right to force his examination by the prosecution. At best, a witness not examined by the police or the prosecution could apply to the trial court to get himself examined under Section 165 of the Indian Evidence Act, 1872, and it is in the discretion of the court to do so, if the testimony of such a witness would be of any value as relating to a relevant fact.

13. In the present instance, even to this Court, the petitioner has not come forth as a witness who could establish any relevant fact. The learned Trial Court exercised its discretion on 28th February, 2017 to dismiss the application of the petitioner. There is no error in this exercise of discretion.

14. The learned Trial Court has given a valid reason for dismissing the application, which is based on the very conduct of the petitioner, inasmuch

as he made no effort to approach the superior police officials or even the court when he was not examined by the I.O. nor listed as a prosecution witness. Had he been an eye-witness and concerned, as he proclaims that he is, for the death of his brother, he would not have sat still till the application under Section 311 Cr.P.C. was moved on 28th July, 2016. The FIR had been registered on 29th August, 2015. Over a period of time, the witnesses have been examined and when the case was approaching conclusion, the petitioner seems to have jumped into the fray, suddenly proclaiming that he too, was an eye-witness.

15. There is no perversity or whimsicality in the orders of the learned Trial Court, which calls for any interference from this Court. Rather, on merit too, this Court finds that the petitioner has approached this Court frivolously and with only *mala fide* intentions to drag on this case.

16. In the light of the foregoing discussion, both the petitions are dismissed with costs of Rs.15,000/- each, to be deposited by the petitioner with the “Delhi High Court Advocates Welfare Trust” and receipts be placed on the record within a week, failing which the Registry is directed to place these matters before the court.

17. The petitions are accordingly dismissed along with the pending application.

18. The judgment be uploaded on the website forthwith.

(ASHA MENON)
JUDGE

MAY 06, 2022/s