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

% **Decided on: 21.12.2023**

+ **CRL.M.C. 6089/2019**

ADITYA SARDA Petitioner

Through: Ms. Sadapurna Mukherjee,
Advocate (through VC).

versus

ARJUN SINGH Respondent

Through: Appearance is not given.

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J. (ORAL)

1. The instant petition under Section 482 of the Criminal Procedure Code, 1973 ('Cr.P.C.') has been filed on behalf of the petitioner against the impugned order dated 23.11.2019 passed by the learned Additional Chief Metropolitan Magistrate, Rohini Courts, New Delhi whereby the application under Section 311 of Cr.P.C. preferred by the complainant was dismissed.

2. Briefly stated the facts of the present case are that the petitioner had filed a complaint under Section 499 and 500 of Indian Penal Code against the respondent. Thereafter, notice under Section 251 of Cr.P.C. was served to the respondent in the year 2012. The examination-in-chief of the complainant had commenced on 24.04.2018. The right of the respondent to further cross-examine the



complainant was closed *vide* order dated 01.06.2018. Thereafter, the respondent had filed an application under Section 311 of Cr.P.C. before the learned Trial Court for recalling of witness which was allowed *vide* order dated 28.07.2018, after which the complainant was partly cross-examined and finally discharged on 14.12.2018. The petitioner herein had moved an application for summoning of additional witnesses on 18.01.2019, which was allowed by the learned Trial Court. Thereafter, it came to the knowledge of the petitioner that there are certain witnesses that may have relevant records which are relevant to the case and an application under Section 311 of Cr.P.C. was filed before the learned Trial on 23.11.2019 which was dismissed *vide* order dated 23.11.2019. The present petition has been filed against the said order wherein the petitioner prays that the impugned order dated 23.11.2019 be set aside and the witnesses be allowed to examine.

3. Learned counsel for the petitioner argues that the learned Trial Court did not appreciate that the examination of additional witnesses is central to the case and essential for proper and just decision of the case. It is further stated that all the witnesses that were sought to be produced before the learned Trial Court were independent witnesses and petitioner had no control over their appearance. It is argued that the mandate of Section 311 of Cr.P.C. is to bring to light the relevant facts that may be important for proper adjudication of trial. The complainant had filed the application under Section 311 of Cr.P.C. before the learned Trial Court for summoning of U. Srinivas Rao, Chief Manager, Indian Overseas Bank, Golf Links, New Delhi and



Mr. S.S. Tanwar, Assistant General Manager, Indian Overseas Bank, Golf Links, New Delhi as the records in relations to letter dated 15.01.2010, 21.01.2010, 05.02.2010 and 27.02.2010 which were written by the accused were relevant to the facts of the present case and essential for establishing the case of the prosecution. It is also stated that it had come to the knowledge of the complainant that aforementioned witnesses had relevant records in their possession at a later stage and the complainant had preferred to file the application immediately. The learned Trial Court had dismissed the application without considering the importance of said witnesses for fair adjudication of the case, and thus, the said impugned order be set aside.

4. On the other hand, learned counsel for the respondent argues that the learned Trial Court has rightly dismissed the application filed by the petitioner under Section 311 of Cr.P.C. and there are no reasons to interfere with the impugned order. It is argued that the application under Section 311 of Cr.P.C. was filed by the complainant to delay the trial and the complainant had taken ample time to record his evidence. It is further argued that the Court had provided sufficient opportunities to the complainant for concluding his evidence, and complainant's evidence was closed on 01.06.2018, after which the complainant i.e. the petitioner in the present case had moved an application under Section 311 of Cr.P.C. which was allowed by the Court and finally complainant's evidence was concluded on 13.09.2019 after granting last and final opportunity. It is stated that the judgment in the present matter has been reserved



and is put up for pronouncement by the learned Trial Court, and the present petition is an attempt on the part of the petitioner to delay the trial. Thus, the present petition filed by the complainant be dismissed.

5. This Court has heard arguments addressed by the learned counsel for the petitioner as well as for the respondent and has perused material on record.

6. In the present case the impugned order was passed on 23.11.2019 *vide* which the application filed under Section 311 of Cr.P.C. on behalf of the present petitioner, who is complainant before the learned Trial Court, was dismissed. The impugned order reads as under:

“...This Court completely agree with the arguments put forth by learned counsel for the accused and the status of the proceedings referred. It will not be out of place to mention that the present matter pertains to year 2011 and is already delayed fairly. It is pertinent to note that the matter was listed for the purpose of complainant's evidence on 26.07.2013 ^or the first time and for one reason or the other the evidence of the complainant could only be completed on 13.09.2019 that Is almost In a period of six years. The complainant called the witnesses from bank and other government department but no record could be produced. The complainant was supposed to take the appropriate steps at the earliest opportunity for locating the relevant record and for taking appropriate Steps In order to get It produced before the Court to support his case. However, the -complainant miserably failed to act upon immediately and no reason has been given by the complainant In the present application for moving the same at much belated stage when the matter is listed for final arguments.

Learned predecessor of this Court on previous date of hearing categorically made clear that no further adjournment shall be granted for the purpose of final arguments. The complainant waited till the next date of hearing that is today to move the present application, which could have been moved prior to the same and the other party could have been



apprised about the same in advance but the complainant has not bothered to do so which Clearly shows that the complainant is trying to delay the proceedings by moving such frivolous application.

In view of the observations given above, this Court does not find any merits in the application nor the delay in moving such application can be condoned without sufficient reasons given in the application. The application deserves to be dismissed in view of the aforesaid grounds, accordingly, same stands dismissed...”

7. In the given facts and circumstances, it will be useful to refer to Section 311 of Cr.P.C., which is reproduced as under:

“311. Power to summon material witness, or examine person present. Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re- examine any person already examined; and the Court shall summon and examine or recall and re- examine any such person if his evidence appears to it to be essential to the just decision of the case.”

8. As repeatedly held by Hon“ble Apex Court in catena of judgments, the recall of witness is not a matter of course and power under Section 311 of Cr.P.C. has to be exercised judiciously, with caution and circumspection, and not arbitrarily or capriciously, on the basis of facts and circumstances of each case, and the discretionary power has to be balanced carefully with considerations such as uncalled for hardship to the witnesses and uncalled for delay in trial [Ref: *Vijay Kumar v. State of U.P.* (2011) 8 SCC 136; *State (NCT of Delhi) v. Shiv Kumar Yadav* (2016) 2 SCC 402; *Ratanlal v. Prahlad Jat* (2017) 9 SCC 340].



9. In the present case, this Court holds that the complaint in the present matter was filed in the year 2011 and the trial has been delayed for a fairly long period. It is further noted that the complainant's evidence commenced on 26.07.2013 and due to one reason or another, the evidence of the complainant was deferred and it was finally concluded on 13.09.2019 after a period of more than six years. This Court observes that an application under Section 311 of Cr.P.C. was filed by the present petitioner/complainant for summoning of additional witnesses on 18.01.2019, which was allowed by the learned Trial Court, but no record could be produced. The complainant was then required to take appropriate steps for locating the relevant record and get the same produced before the learned Trial Court but the petitioner failed to do so. The application under Section 311 of Cr.P.C. was filed by the petitioner before the learned Trial Court at the stage of final arguments which was dismissed by the learned Trial Court. The present petition has been filed at a stage when the judgment is already reserved in the matter and it is put up for pronouncement by the learned Trial Court.

10. This Court notes that there were ample opportunities available to the petitioner/complainant for summoning of additional witnesses and the application under Section 311 of Cr.P.C. was preferred only at the stage of final arguments. In these circumstances, this Court is of the opinion that the provisions of Section 311 of Cr.P.C. cannot be used to delay the proceedings or to cause inconvenience to the other party as that also amounts to miscarriage of justice by delaying the trial, or for abuse of process of law.



11. In view thereof, this Court does not find any merit in the present petition and the same stands dismissed along with pending applications, if any.

12. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

DECEMBER 21, 2023/ns