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

% Judgment delivered on: 04.07.2023

+ CRL.REV.P. 317/2022 & CRL.M.A. 10212/2022 (for stay)

HARMINDER SINGH ANAND Petitioner

versus

HARCHARAN SINGH Respondent

Advocates who appeared in this case:

For the Petitioner : Ms. Jatinder Marwah, Advocate for Revisionist.

For the Respondent : Mr. Shayuk Kumar, Advocate.

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

1. This is a revision petition filed under Section 397 read with Section 482 of the Criminal Procedure Code, 1973 seeking setting aside of the impugned order dated 11.02.2021 passed by the learned Trial Court in complaint case No. 5003121/2016 titled as "*Harcharan Singh vs, Harminder Singh Anand*" whereby the learned Trial Court had dismissed the application under Section 311 Cr.P.C. filed by the petitioner seeking recall of PW-1 for further cross-examination.



2. Ms. Marwah, learned counsel appearing for the revisionist/petitioner submits that due to an unfortunate incident, the petitioner was unable to appear before the Court to assist the counsel for cross-examining PW-1 on 07.12.2019.

3. Ms. Marwah, learned counsel submits that on 28.07.2018, the right to cross-examine PW-1 was closed. She further submits that the petitioner had subsequently filed an application under Section 311 of the Cr.P.C., 1973 seeking recall of the order dated 28.07.2018 as also for recall of the PW-1 for further cross-examination.

4. Ms. Marwah submits that in the month of June 2018, the petitioner had unfortunately got injured due to gunshot to his jaw. In the meanwhile, he was undergoing multiple surgeries for treatment of such gunshot injury.

5. Ms. Marwah submits that even today, the petitioner is not fully treated and is still undergoing medical treatment and is unable to communicate well with the counsel.

6. Ms. Marwah submits that the petitioner seeks only one opportunity to cross-examine PW-1.

7. *Per contra*, Mr. Shayuk Kumar, learned counsel appearing for the respondent submits that even prior to the closure of the right to cross-examine, atleast six opportunities were afforded to the petitioner, which the petitioner failed to avail of.

8. Mr. Kumar, learned counsel also submits that there is no explanation given in the application under Section 311 Cr.P.C. as to why the petitioner had not cross-examined PW-1 even on the earlier occasions.



9. Learned counsel submits that the presence of the petitioner during cross-examination was not required in such cases as the present one inasmuch as the instructions must have already been given with respect to the cross-examination to be conducted to his counsel, even prior to receiving such gunshot injury.

10. Mr. Kumar, learned counsel also submits that apart from the above, the petitioner through his counsel had actually conducted cross-examination a couple of times and on that basis submits that the excuse, which is now being provided to this Court is untenable in law.

11. On that basis, learned counsel submits that the present petition ought to be dismissed with costs.

12. This Court has considered the submissions made by the learned counsel appearing for the parties and also perused the impugned order dated 11.02.2021 whereby the application under Section 311 of the Cr.P.C. was dismissed

13. It is trite that the right to cross-examination is an indelible part of the trial and the petitioner and persons like the petitioner have a complete right to cross examine the prosecution witnesses and attempt to discredit and/ or demolish the version of the prosecution witnesses.

14. Another relevant consideration which the learned Trial Court appears to not have considered sympathetically is the fact that the petitioner had undergone fatal injury due to a gunshot to his jaw and it must have taken a long time for the treatment of such gunshot injury, and a number of surgeries must have taken place for treating such injuries.



15. It appears from the perusal of the records before this Court that the learned Trial Court was aware about the medical records, which were placed by the petitioner before it for consideration that the petitioner had undergone multiple operations for rectification of the injured jaw, despite which the learned Trial Court appears to have not considered the same in its impugned order.

16. Though the submissions of the learned counsel for the respondent that number of opportunities were afforded which were not availed by the petitioner is justified, however, the fact would still remain that as on 19.06.2018, the petitioner had suffered grave injuries to the jaw due to the gunshot injury. This is also re-affirmed and reiterated by the learned Trial Court itself in various orders which have been placed on record by the petitioner.

17. It is obvious that if the petitioner had suffered such a near fatal injury on 19.06.2018, for obvious reasons, the petitioner could not have appeared on 28.07.2018 when the right to cross-examine was closed.

18. It is also informed that the petitioner has already cross-examined the PW-1 on one occasion.

19. Looking at the aforesaid observations as also the fact that the petitioner had suffered a near fatal injury to his jaw, which was the primary reason as to why he could not appear to assist his counsel on 28.07.2018. This Court is of the opinion that one opportunity can and ought to be granted to the petitioner for conducting further cross-examination of PW-1. However, the same would be subject to costs.

20. It is informed that the next date of hearing before the learned Trial Court is on 28.08.2023.



21. PW-1 is directed to present himself for further cross-examination 28.08.2023.
22. The petitioner is directed to conduct cross-examination of PW-1 on 28.08.2023.
23. No further adjournment shall be granted by the learned Trial Court on that account for any reason whatsoever. The cross-examination shall commence and conclude on the same day.
24. The said permission is granted subject to a cost of Rs. 15,000/- to be paid by the petitioner to the respondent on or before 28.08.2023 against a valid receipt. Copy of the receipt be filed before the learned Trial Court under a proper index.
25. The petition along with pending application is disposed of in the above terms.

TUSHAR RAO GEDELA, J.

JULY 4, 2023/nd