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

+ **CRL.REV.P. 373/2022**

SUNIL YADAV

..... Petitioner

Through: Mr. Jitender Sethi, Mr. Hemant Gulati
and Mr. Shobit D., Advs.

versus

STATE, NCT OF DELHI

..... Respondent

Through: Mr. Hemant Mehla, APP and W/SI
Rajeev, PS Neb Sarai.

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Date of Decision: 28.08.2023.

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA, J. (Oral)

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1. The present petition has been filed challenging the order dated 06.05.2022 passed by the learned Trial Court vide which the learned Trial Court dismissed the application under Section 311 Cr.P.C. of the petitioner for recalling/re-summoning of the victim for the purpose of cross-examination. The learned Trial Court predominantly dismissed the application on the ground that the prosecutrix was duly cross-examined by the learned counsel and the application was moved after a delay of around 4 years.
2. Briefly stated, a complaint was filed by the father of the victim that his

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daughter had gone to school on 19.02.2014, but she did not come back. The father had the suspicion that she had eloped with the petitioner to his village in Bihar. On the basis of this, FIR no. 136/2014 was registered at PS Neb Sarai under section 363 IPC, and subsequently, sections 366/376 of IPC and section 4/6 of POCSO were added.

3. It is submitted that the petitioner was arrested in the present case and further during the trial, the prosecutrix was examined as PW-1 on 16.09.2015 and her cross-examination was concluded on 13.01.2017.
4. Learned counsel for the petitioner has argued vehemently that there are material contradictions in the statement of the prosecutrix recorded under Section 164 Cr.P.C. and the statement made by the prosecutrix before the learned Trial Court and thus prosecutrix was required to be confronted with the statement made under Section 164 Cr.P.C. which could not be done at the time when the prosecutrix was cross-examined.
5. Learned counsel for the petitioner submits that the petitioner moved an application u/s 311 Cr.P.C. for recalling/re-examination of the victim as there are some other documents also written by the prosecutrix herself which could not be put to the prosecutrix, therefore recalling the prosecutrix is essential for justice. The same was erroneously dismissed by the learned trial court vide order dated 06.05.2022.
6. Learned counsel for the petitioner has relied upon **Varsha Garg v. State of Madhya Pradesh and Ors.**, (2022) 3 Crimes 211 (SC), **Shiv Kumar v. State**, 219 (2015) DLT 76.



7. Learned APP for the state has vehemently opposed the same.
8. Learned APP for the state submits that the present application was moved after around 4 years after the examination and cross-examination of the prosecutrix.
9. Learned APP for the state has further submitted that the learned Trial Court has taken into account Section 33(5) of the POCSO Act which provides that the victim should not be called repeatedly to testify.
10. The Revisional jurisdiction conferred upon this court under Section 397 Cr.P.C. is very limited in nature. The Hon'ble Supreme Court in a catena of judgments has held that the scope of Section 397 Cr.P.C. can only be exercised to prevent abuse of process of court or to secure the ends of justice. In **Amit Kapoor v. Ramesh Chander** (2012) 9 SCC 460, the Apex Court inter-alia held that:

“12. [Section 397](#) of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error and it may not be appropriate for the court to scrutinise the orders, which upon the face of it bears a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be



invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits...

20. The jurisdiction of the court under [Section 397](#) can be exercised so as to examine the correctness, legality or propriety of an order passed by the trial court or the inferior court, as the case may be. Though the section does not specifically use the expression "prevent abuse of process of any court or otherwise to secure the ends of justice", the jurisdiction under [Section 397](#) is a very limited one. The legality, propriety or correctness of an order passed by a court is the very foundation of exercise of jurisdiction under [Section 397](#) but ultimately it also requires justice to be done. The jurisdiction could be exercised where there is palpable error, non-compliance with the provisions of law, the decision is completely erroneous or where the judicial discretion is exercised arbitrarily. On the other hand, [Section 482](#) is based upon the maxim *quando lex aliquid alicui concedit, concedere videtur id sine quo res ipsa esse non potest* i.e. when the law gives anything to



anyone, it also gives all those things without which the thing itself would be unavoidable. The section confers very wide power on the Court to do justice and to ensure that the process of the court is not permitted to be abused.”

11. In light of the judgments of the Hon’ble Supreme Court, it is clear that it must be demonstrated that the impugned order has a gross error, is not compliant with the law, contains findings without a basis of evidence, in ignorance of material evidence or that there is arbitrary judicial discretion. However, I consider that the learned counsel has failed to elucidate any such point and that there has been no abuse of procedure or injustice so as to invoke Section 482. The learned Trial Court has taken a view on the basis of material present on the record in accordance with the law.
12. In view of the submissions made, the present petition is dismissed.

DINESH KUMAR SHARMA, J

AUGUST 28, 2023/AR..