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

+ CRL.M.C. 4496/2022

DEEPAK MOHAN & ANR. Petitioners

Through: Mr.Piyush Chhabra, Advocate

versus

STATE NCT DELHI & ANR. Respondents

Through: Mr.Digam Singh Dagar, APP for the State.

Mr.Shohit Chaudhry, Adv. for Respondent no.2.

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Date of Decision: 14.03.2023

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA, J. (Oral)

1. The present petition has been filed under Section 482 Cr.P.C. challenging the order dated 10.11.2022, whereby the application under Section 311 Cr.P.C. filed by the petitioner seeking to recall the complainant/respondent no. 2 for his further cross-examination. has been dismissed by learned MM-02 (NI Act), South district, Saket Courts, New Delhi in CTCases Nos. 1282/2016 & 471820/2016.
2. A perusal of the order sheets indicates that in the present case, CE was first closed on 30.01.2018. Thereafter, the petitioner/accused moved an application under section 311 which was allowed vide order dated 23.05.2018. However, later CE was again closed on 12.09.2019 and once

again the petitioner/accused moved an application under section 311 Cr.P.C accused and the same was allowed subject to a cost of Rs. 10,000/- on 10.01.2020 and it was specifically mentioned that only one opportunity will be granted to the accused to finish the cross-examination of the complainant on the same day failing which, right was to be closed. Part cross-examination of the complainant was conducted on 03.02.2020. However, his further cross-examination was deferred for the want of documents. Thereafter, the matter was postponed on various dates and finally on 10.05.2022, learned MM closed the right of the accused/petitioner to cross-examine the complainant in view of the fact that the proxy counsel for the accused had once sought an adjournment on the ground of non-availability of the main counsel.

3. Thereafter, on 06.08.2022, Learned MM taking into account the entire proceedings declined the request of the accused/petitioner to recalling of the complainant again for his further cross-examination. Learned MM (NI Act) while dismissing the plea(s) took into account that sufficient opportunities had already been given to the accused to conclude the cross-examination of the complainant/respondent no.2 that has been going on since 23.03.2017. Learned MM (NI Act) *inter alia* was of the view that the accused person has made it a pattern to not appear during the court proceedings at his whims and move frivolous applications to delay the trial. It was noted that the right of the accused to further cross-examine the complainant had already been closed twice due to the callous attitude towards the case.

4. It is pertinent to note that a revision petition bearing no. CR No. 301/2022 was filed by the petitioner which was dismissed as the same being not maintainable.
5. Aggrieved of this, the accused has invoked the jurisdiction of this court. Learned counsel for the petitioner has assailed the impugned order on the ground that the learned MM has wrongly rejected the application of the accused. He submits that complete cross-examination of the complainant is important for the just decision of the case and the same could not be done in view of the ongoing pandemic as well as the non-appearance of the complainant. He also submits that, in fact, on 10.05.2022 the main counsel of the petitioner/accused was engaged in a matter listed before the Hon'ble Supreme Court and only a pass-over was requested by the proxy counsel of the accused and not an adjournment.
6. I do not find any merit in this contention of the petitioner.
7. It is true that this Court has inherent powers but the same are required to be exercised sparingly so as to avoid needless multiplicity of proceedings and unnecessary delay in trial and protraction of proceedings. Such powers under Section 482 Cr. P.C. can only be exercised by this Court when on examination of the record, it comes to the conclusion that either a grave miscarriage of justice is caused or it is an abuse of process in passing the impugned orders or the required statutory procedure was not followed by the courts below. Whenever the petitions are filed under Section 482 Cr.P.C. with a view to circumvent the bar of revision under Section 397(2) Cr.P.C. against the interlocutory order and bar of second revision under 399(3) Cr.P.C., then ordinarily this court should be slow in exercising its powers under Section 482 Cr.P.C. Such powers should

be exercised in rare cases where there is a grave miscarriage of justice or an abuse of process by courts below while passing the impugned orders otherwise not.

8. It is pertinent to note that even the power conferred under Section 311 is to be invoked by the court to meet the ends of justice, for strong and valid reasons and it is to be exercised with great caution and circumspection. The determinative factor in this regard would be whether the summoning or recall of the witness is in fact, essential to the just decision of the case keeping in view that fair trial – which entails the interests of the accused, the victim and of the society – is the main object of the criminal procedure and the court is to ensure that such fairness is not hampered or threatened in any manner. It is, however, to be borne in mind that whereas the section confers a very wide power on the court on summoning witnesses, the discretion conferred is to be exercised judiciously, for strong and valid reasons with caution and circumspection to meet the ends of justice. It is well-settled that the court should not encourage the filing of successive applications for the recall of a witness under section 311 Cr.P.C. to delay the proceedings.
9. It is a matter of record that the cross-examination of the complainant is pending since 2017 and the perusal of the record indicates that there can not be any doubt that in the present case, the Trial Court has given more than sufficient opportunities to the accused/petitioner to complete the cross-examination of the complainant.
10. Taking into account the totality of facts and circumstances, I do not see any reason to interfere with the order of the learned Trial Court. However, it seems that the application as well as the present petition has

been filed with a view to delay the trial. Hence, I am of the opinion that while dismissing this petition, the petitioners should be saddled with costs.

11. Accordingly, the present petition is dismissed with costs of Rs. 5,000/- to be deposited with Delhi High Court Legal Service Committee.

DINESH KUMAR SHARMA, J

MARCH 14, 2023

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