



2024:DHC:5718



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

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Date of decision:18 July, 2024

+ CRL.M.C. 729/2024

BHANU RAGHAV

.....Petitioner

Through: Mr. Rohit Rawat, Advocate.

versus

STATE OF NCT OF DELHI

.....Respondent

Through: Mr. Amit Ahlawat, APP for the State
with Insp. Shiv Prakash PS Alipur.**CORAM:****HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA****J U D G M E N T (oral)**

1. The present Petition under Article 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure (*hereinafter referred to as "Cr.P.C, 1973"*), has been filed on behalf of the petitioner for setting aside the impugned Order dated 20.12.2023, passed in CrI.Case No. 58535/2016, titled as '*State vs. Bhanu Raghav & Ors.*', *vide* which the learned Trial Court has dismissed the application of the petitioner, for recalling the complainant PW-7, Sh. Virender Kumar, for further cross-examination.

2. It is submitted in the Petition that an Application under Section 311 Cr.PC had been filed by the petitioner, for recalling PW-7, Sh. Virender Kumar, for further cross-examination, which has been dismissed *vide* the



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impugned Order.

3. The petitioner has stated that the FIR bearing No. 129/2015, under Sections 302/34 of the Indian Penal Code (*hereinafter referred to as "IPC"*), registered at Police Station Alipur, in which the Charge-Sheet got filed and the trial is in progress before the learned Special Judge (NDPS), District North, Rohini Courts, Delhi. It is at the stage of defence evidence.

4. PW-32, Inspector Mahabir Singh, the IO, who is the Investigating Officer, has been examined on 18.10.2023 and his cross-examination has been conducted by the petitioner on 02.11.2023. It is asserted that in the cross-examination, PW-32 has deposed about certain vital and crucial aspects. During the cross-examination, one video clip was played, which was the part of the Charge-Sheet wherein one Sardarji is seen holding a video-camera, who is the team member of the deceased and the complainant, during the wedding function. Subsequently, on being asked, PW-32, admitted that the Sardarji was visible with a video camera in the video clip and was covering the wedding function. PW-32, the IO further admitted that he had neither interrogated Sardarji nor had he enquired about his presence from the complainant.

5. The petitioner has submitted that the above stated fact can be clarified only by the complainant/PW-7, Sh. Virender Kumar, who can explain the presence of Sardarji.

6. It is further submitted that after going through the facts and circumstances of the present Case, learned counsel for the petitioner has observed that certain vital facts of the alleged incident, have not been properly put to PW-7. Having regard to the gravity and the seriousness of the alleged charges against the petitioner, it is submitted that the PW-7 needs



to be further cross-examined.

7. It is stated that the petitioner is in judicial custody since 05.02.2015 and was released on Regular Bail by the Trial Court in April, 2023. During this period of judicial custody, there was no other person who could properly pursue with the previous counsel. Now, after being enlarged on bail, certain vital facts have been emerged and therefore, the present application has become necessary and has been filed *bonafide*.

8. PW-7 is the only eye-witness who testified in the Court that before the alleged incident, there was an altercation between the accused persons and the deceased, though, no other witness has supported the testimony of PW-7. There are various contradictions in the testimony of prosecution witnesses for which further cross-examination of PW-7 has become imperative on the following aspects:-

Firstly, with respect to the presence of One Sardar Ji

Secondly, with respect to other photographers, who are seen in the video;

Thirdly, with respect to the factum that the Vidai was covered from the house of Bride i.e. from Sant Nagar Burari.

Fourthly, with respect to the fact whether altercation took place between the Sardarji and the deceased Raj Kumar.

Fifthly, with respect to the White Maruti Car owned in the name of one Sardar ji.

9. The petitioner has explained that he had moved the application under Section 311 CrPC on 20.12.2013 for seeking further cross-examination of PW-7, Sh. Virender Kumar, on these aspects but the Application has been dismissed by the learned trial Judge, without appreciating the submissions



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made by the counsel and also without considering the seriousness and the gravity of the charges. By way of this present Petition, it is submitted that only one date is required for further cross-examination of PW-7. Hence, the present Petition has been filed.

10. Learned counsel for the petitioner has placed reliance on 'Ratanlal vs. Prahlad Jat', (2017) 9 SCC 340; 'Vijay Kumar vs. State of U.P.', (2011) 8 SCC 136; 'Zahira Habibullah Sheikh vs. State of Gujarat', (2006) 3 SCC 374; 'Manju Devi vs. State of Rajasthan', (2019) 6 SCC 203; 'Harendra Rai vs. State of Bihar', 2023 SCC OnLine SC 1023; 'Satbir Singh vs. State of Haryana & Ors.' in Criminal Appeal of 2013, arising out of the SLP CrI.No. 1258/2022.

11. Learned APP for the State has vehemently contested this Application on the ground that PW-7 had been examined way back in the year 2016 while the present Application has been filed now when defence witnesses, have also been examined by the petitioner. It is submitted that there are no new facts which have emerged from the testimony of the IO and the Application under Section 311 CrPC, has been rightly rejected by the learned trial court.

12. **Submissions heard.**

13. It is settled law that the Court must interfere and exercise its power under Section 311 CrPC, where the facts make out a case. In 'Natasha Singh Vs. CBI', Criminal Appeal No. 709/2013, the Apex Court observed that the scope and the object of Section 311 Cr.PC, is to enable the Court to determine the truth and to render a just decision after discovering all relevant facts and obtaining proper proof of such facts to arrive at a just decision of the case. This power must be exercised judiciously and not



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capriciously or arbitrarily, as any improper or capricious exercise of such power may lead to undesirable results. It was further observed that fair trial is the main object of criminal procedure and it is the duty of the Court to ensure that such fairness is not hampered or threatened in any manner. Thus, under no circumstances can the person's right to fair trial be jeopardised. Essentially, the rules of procedure have been designed to ensure justice and must be scrupulously followed by the Court, with full zeal in order to ensure that there is no breach of the same. Similar observations have been weighed in the other Judgments relied upon by the petitioner. The law on Section 311 Cr.PC stands fairly crystalised that the discretion given to the Courts, must be exercised in order to do complete justice not only from the point of view of the accused and the prosecution but also from the point of view of an orderly Society. Recall of a witness is not a matter of course and the discretion must be exercised by the Court judicially to prevent failure of justice.

14. Having stated the contours of exercise of discretion under Section 311 CrPC, the facts of the present case may be considered. It is a case of 302/34 IPC registered against the accused in the year 2015. PW-7 Sh. Virender Kumar, who is the eye witness of the entire incident, was thoroughly cross-examined on all the possible aspects by the learned counsel for the petitioner, way back in the year 2016. Thereafter, all other witnesses have been cross-examined with the last witness being PW-32, IO, whose cross-examination has been concluded in the year 2023.

15. From the submissions made on behalf of the petitioner, it is evident that the counsel now representing the petitioner, got engaged in the year 2022. His main grievance seems to be that in his estimation, the entire cross-



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examination of PW-7 is not covering the vital aspects of the defence of the petitioner. According to him, there was one Sardarji, with a video camera visible in the video clip that has been displayed in the Court and with which PW-32, Investigating Officer was confronted.

16. Pertinently, this video forms the part of the Charge-Sheet and a copy of the same was available with the accused. Moreover, PW-7 had been thoroughly cross-examined on all the aspects. The presence of Sardarji with the video camera; him being the owner of a White Maruti Car and his alleged altercation with the deceased, was never a part of the defence of the petitioner. Though, it has not been claimed, agitated or suggested to any of the witnesses, but even if the altercation of the deceased with the Sardarji in the wedding did take place, it does not in any manner prevent this defence to be established by the accused, from his witnesses.

17. Admittedly, the incident pertains to a *Barat* and naturally many people would be present. If the cross-examination of various persons present in the wedding is started to be taken as a new fact on which further cross-examination is merited, there would be an endless cross-examination. PW-7 has not only been extensively cross-examined by the earlier counsel but there is no basis which has now established by the petitioner's counsel of there being any new fact having emerged in the testimony of PW-32. There is no merit whatsoever on the grounds given by the petitioner, for recall of PW-7 to confront and question him on the aspects as stated in the Application.

18. There is no merit in the present Application, which has rightly been dismissed by the learned Trial Court *vide* its Order dated 20.12.2023.



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The Petition is hereby dismissed.

(NEENA BANSAL KRISHNA)
JUDGE

JULY 18, 2024/RS