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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 1582/2024**
PAWAN PASWAN Petitioner
Through: Mr.Rahul Thakur, Adv.

versus

THE STATE GOVT OF N.C.T. OF DELHI Respondent
Through: Mr.Shoaib Haider, APP with SI
Manish Yadav

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

% **27.02.2024**

CRL.M.A. 6151/2024 (Exemption)

1. Allowed, subject to all just exceptions.

CRL.M.C. 1582/2024 & CRL.M.A. 6150/2024

2. This petition has been filed by the petitioner under Section 482 of Code of Criminal Procedure, 1973 (in Short 'Cr.P.C'), challenging the Order dated 01.08.2023 titled *State v. Pawan Paswan* passed by the learned Additional Sessions Judge-1 (POCSO), South East District, Saket Courts, New Delhi in SC No. 514/2021.

3. The above case has been registered on an FIR No. 0375/2006 registered at Police Station: Defence Colony, Delhi. The petitioner is facing the trial under Sections 376/511 of the Indian Penal Code, 1860 (in short, 'IPC').

4. The petitioner filed an application under Section 311 of the Cr.P.C praying for recalling the victim (PW1) for re-examination. In the application, the only ground urged by the petitioner was as under:

"2. That the accused/applicant was not did



cross examine properly because at the time of cross examination of witness the counsel of accused was suffering from spine disease and not prepared for cross-examination and because of that the counsel for the accused did not cross examine properly and there have major relevant fact which has to be examine for fair justice which is important to have on record.”

5. The said application has been dismissed by the learned Additional Sessions Judge, observing as under:

“As this provision provides discretionary power to the court, it should be invoked with great caution and circumspection. In the recent judgment in the case of Varsha Garg v. The State of Madhya Pradesh & Ors. (2022), the Supreme Court of India expressed the basic parameters for the application of Section 311 in the statement, which reads as “essentiality of the evidence of the person who is to be examined coupled with the need for the just decision of the case constitutes the touchstone which must guide the decision of the court.”

In view of the above and in view of the submissions made by Ld. Addl. PP for the State, this Court is of the considered opinion that victim has been duly cross examined by the accused and allowing the application would be abuse of process of law as it would cause unnecessary harassment to the victim and would further delay the proceedings of this case. Therefore, no further opportunity can be granted to the accused to cross examine the victim.”

6. The present petition has been filed bereft of any particulars. Neither has it been stated when the examination of the victim had taken place nor any reasons are given as to why she needs to be recalled for further cross-examination. The only ground urged in the



application, as noted hereinabove, is that the counsel for the accused was suffering from spine disease due to which he had not prepared for cross-examination. Even the medical documents of the counsel, to substantiate the same, have not been placed on record. It is clear that the application has been filed merely as an abuse of the process of the court to somehow delay the trial. Such attempt of the petitioner cannot be allowed to succeed.

7. In *Swapan Kumar Chatterjee v. Central Bureau of Investigation* (2019) 14 SCC 328, the Supreme Court has reiterated that power conferred under Section 311 of the Cr.P.C should be invoked by the court only to meet the ends of justice; it shall not be exercised if the court is of the view that the application has been filed as an abuse of the process of law. The present case falls in this exception. Barring a vague statement, neither has it been shown as to how recalling the victim is necessary to meet the ends of justice, while on the other hand, it appears that the application has been filed only to delay the trial and cause further harassment and agony to the victim.

8. Accordingly, I find no merit in the present petition. The same is dismissed. The pending application also stands disposed of.

NAVIN CHAWLA, J

FEBRUARY 27, 2024/ns/am

Click here to check corrigendum, if any