



2024:DHC:1893



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

Date of decision: 05.03.2024

+ **CRL.M.C. 1833/2024**

S Petitioner

Through: Mr.Amar Nath Jha, Adv. along
with petitioner in person.

versus

STATE NCT OF DELHI AND ORS. Respondents

Through: Ms.Priyanka Dalal, APP with
SI Gaurav

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

CRL.M.A. 6991/2024 (Exemption)

1. Allowed, subject to all just exceptions.

CRL.M.C. 1833/2024 & CRL.M.A. 6990/2024

2. This petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.'), challenging the Order dated 31.01.2024 passed by the learned Principal District & Sessions Judge, South District, Saket Courts, New Delhi in CR No.48/2024, titled *S v. Arpit Sharma & Ors.*, dismissing the said revision petition.

3. The above revision petition was filed by the petitioner challenging the Order dated 04.01.2024 passed by the learned Metropolitan Magistrate-02 (Mahila Court), South Saket Courts, New

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Delhi in Criminal Case No.1020/2020, titled *State v. Arpit Sharma and Ors.*, dismissing the application filed by the petitioner herein under Section 311 of the Cr.P.C.

4. The above criminal case has been filed on the basis of FIR No.398/2018 registered at Police Station: Saket, New Delhi under Sections 354/506/509/34 of the Indian Penal Code, 1860 (in short, 'IPC').

5. Pursuant to the FIR, the charge-sheet was filed and, thereafter, the petitioner, who is the Complainant, was summoned as a witness. The Order dated 04.01.2024 records, that in spite of service of the summons through the DCP concerned and the receipt of the same, the petitioner did not appear as a witness. The petitioner was dropped as a witness vide Order dated 24.09.2022. Thereafter, the petitioner filed an application under Section 311 of the Cr.P.C., which was allowed vide Order dated 30.06.2023, granting last and final opportunity to the petitioner who offered herself for examination. On the next date, as an adjournment was sought on behalf of the petitioner on the ground that she was not feeling well, the case was again adjourned. On 06.10.2023, the petitioner after only a few questions that had been put to her in the examination-in-chief, complained that she was unwell and sought an adjournment. In the Order dated 04.01.2024, the learned Trial Court records that the above excuse did not appear to be genuine and she was feigning ill health. Be that as it may, the trial again stood adjourned. On 03.11.2023, the petitioner filed an application seeking exemption from personal appearance on the ground of her child's illness, and again did not appear before the learned Trial Court,



forcing the learned Trial Court to close her evidence, observing that her non-appearance appears to be deliberate. It was further observed that the accused also has a right to speedy justice and it appears that the petitioner is deliberately causing delay in the conclusion of the trial.

6. The petitioner, thereafter, on 21.11.2023, filed an application under Section 311 of the Cr.P.C., praying that she be allowed to examine herself as a witness. The said application was dismissed by the learned Trial Court vide its Order dated 04.01.2024, finding no merit in the said application and, in fact, observing that the petitioner has tried to make a mockery of the Court by seeking adjournments on frivolous grounds and causing unreasonable and unexplained delay in the conclusion of the trial.

7. The petitioner filed the abovementioned revision petition to challenge the said Order, which has been dismissed by the learned Principal District & Sessions Judge vide the order impugned in the present petition.

8. The learned counsel for the petitioner submits that the petitioner had placed on record the medical documents in support of her submission that her child was unwell on 03.11.2023. There were also medical documents produced on record to show that she herself was unwell on 04.10.2023. He further submits that the petitioner is a crucial witness to the case of the prosecution and, therefore, it is in the interest of justice that the petitioner should be allowed to depose as a witness in the above criminal case. He further submits that the petitioner is ready and willing to abide by the conditions put by this



Court.

9. I have considered the submissions made by the learned counsel for the petitioner.

10. The Supreme Court in *Swapan Kumar Chatterjee v. Central Bureau of Investigation*, (2019) 14 SCC 328, reiterated that power conferred under Section 311 of the Cr.P.C should solely be invoked by the court for the purpose of serving the ends of justice; it should not be exercised if the court is of the view that the same is filed only to abuse the process of law. In the present case, it can be seen that the petitioner has sought adjournments time and again and she deliberately chose not to get herself examined on some or the other pretext. The accused also has a right to expeditious conclusion of the trial, for mere pendency of a case accusing a person of a criminal offence can attach stigma and cause embarrassment. The right of the accused cannot be defeated with the complainant choosing to appear as a witness at her own terms and only when convenient to her.

11. The learned Trial Court, before whom the petitioner's evidence was being recorded on 06.10.2023, has observed that the plea of the petitioner that she had suddenly fallen ill, appeared to be false and only a ruse to get an adjournment. The learned Trial Court notes that prior to that as well, the petitioner had not appeared as a witness, forcing the prosecution to drop her as a witness on 24.09.2022. On 03.11.2023, again an adjournment was sought on behalf of the petitioner, stating that this time her son was unwell. It appears that the petitioner is merely trying to, one way or the other, ensure that the above criminal case does not meet its end. Such abuse of the process



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cannot be allowed to sustain.

12. I find no merit in the present petition. The same is accordingly dismissed. The pending application also stands disposed of.

NAVIN CHAWLA, J

MARCH 5, 2024/ns/am

Click here to check corrigendum, if any