



2024:DHC:795



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

Date of decision: 01.02.2024

+ **CRL.M.C. 2069/2022 & CRL.M.A. 8761/2022**

SH. GAURAV SARDANA

..... Petitioner

Through: Mr.L.S. Solanki, Dr.Anu
Solanki, Mr.Sukhmandeep
Singh and Ms.Preeti Sharma,
Advs.

versus

THE STATE GOVT. OF NCT OF DELHI & ANR.

..... Respondents

Through: Mr.Aman Usman, APP with SI
Vandana

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. This petition has been filed by the petitioner under Section 482 of the Code of Criminal Procedure, 1973 (in short, 'CrPC') challenging the Order dated 31.03.2022 (hereinafter referred to as 'Impugned Order') passed by the learned Additional Sessions Judge, (SFTC)-01, West District, Tis Hazari Courts, Delhi (hereinafter referred to as 'Trial Court') in SC No. 55955/2016 titled as ***State v. Gaurav Sardana***, Case FIR No. 1265/2015 registered at Police Station: Hari Nagar under Sections 313/376/494 of the Indian Penal Code, 1860 (in short, 'IPC'), dismissing his application filed under



2024: DHC: 795



Section 311 of the Cr.P.C. seeking recall of the prosecutrix/PW1 and the IO/PW4 for further cross-examination.

2. The Impugned Order indicates that PW1/prosecutrix was allowed to be recalled for further cross-examination vide Order dated 01.03.2017 of the learned Trial Court. She appeared before the learned Trial Court on 07.12.2021, however, as the learned counsel for the petitioner did not appear in spite of repeated passovers granted, she was discharged. The learned Trial Court has also observed that no useful purpose would be served in recalling her as the examination of PW3 has been recorded and nothing substantial has been obtained from his statement.

Submissions of the learned counsel for the petitioner

3. The learned counsel for the petitioner submits that his application for recall of PW1 had been allowed by the learned Trial Court vide Order dated 01.03.2017. Thereafter, the proceedings before the learned Trial Court were listed on various dates, details whereof are given in paragraph no. 5 of the present petition. For a period of almost 4 years, the prosecutrix, however, did not appear before the learned Trial Court. She appeared for the first time post the Order of 01.03.2017, only on 07.12.2021. He submits that, on that date, unfortunately, he was held up in another matter in the High Court of Delhi and therefore, could not appear before the learned Trial Court on time, however, the application seeking recall of the PW1 was filed on the very same day before the learned Trial Court. He submits that the petitioner should not be prejudiced in his defence for non appearance on part of the lawyer.



Submissions of the learned APP

4. On the other hand, the learned APP submits that the application filed by the petitioner has been rightly rejected by the learned Trial Court. He submits that the intent of the petitioner is only to delay the trial and it is for this reason that the PW1 was not cross-examined on 07.12.2021, in spite of repeated opportunities being granted to the petitioner for the said purpose. He submits that merely because the learned counsel does not appear, is no ground to recall the witness.

Analysis and Conclusion

5. I have considered the submissions made by the learned counsels for the parties.

6. Though, it is correct that only because of non-appearance of the learned counsel for the petitioner, the clock should not be put back by recalling the witness who has been examined in his absence, at the same time, in the present case, the PW1 had been allowed to be recalled by the learned Trial Court vide its Order dated 01.03.2017. The submission of the petitioner that, thereafter, for a period of almost four years PW1 did not appear before the learned Trial Court, has remained undisputed. She appeared for the first time post the Order of 01.03.2017, only on 07.12.2021. The learned counsel for the petitioner, however, could not appear before the learned Trial Court on that day due to his occupation before the High Court. The application seeking her recall was filed by the petitioner on the very same day. This reflects *bona fide* on part of the petitioner. In any case, the petitioner should not be made to suffer for the fact that his counsel



2024: DHC: 795



could not appear before the learned Trial Court for some reasons.

7. As far as the observation of the learned Trial Court that no useful purpose shall be served in recalling the witness, in my opinion, this issue should not have been prejudged by the learned Trial Court at this stage. At this stage, the only issue before the Court was whether the petitioner has made out a case for recalling the witness.

8. Accordingly, the Impugned Order dated 31.03.2022 is set aside. PW1 is directed to be recalled for further cross-examination, subject to availability, before the learned Trial Court in terms of the Order dated 01.03.2017. The learned Trial Court shall fix a date for her appearance and for the recording of her further cross-examination.

9. By the present petition, the petitioner also prays for recall of PW4, that is, the Investigating Officer (IO) in the abovementioned FIR.

10. The learned APP rightly points out that the Impugned Order does not show any discussion on the request of the petitioner for recall of PW4, though, the application filed by the petitioner before the learned Trial Court does have this prayer.

11. In view of the above, and as PW1 has been directed to be recalled for further cross-examination, the learned Trial Court shall also consider the request of the petitioner for recall of PW4.

12. It is made clear that on the prayer of the petitioner to recall PW4, this Court has not expressed any opinion and it will be for the learned Trial Court to decide this prayer in accordance with law.

13. As considerable delay has been caused by the petitioner in the trial, the petitioner shall pay costs of Rs.15,000/-, to be paid to the



2024:DHC:795



prosecutrix on her appearance before the learned Trial Court.

14. The petition along with the pending application is disposed of in the above terms.

NAVIN CHAWLA, J

FEBRUARY 1, 2024/ns/ss

Click here to check corrigendum, if any