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

+ CRL.M.C. 2927/2024, CRL.M.A. 11182/2024

RAMAN CHAHAL & ANR.

.....Petitioners

Through: Mr. A.K.Mishra, Adv

versus

THE STATE NCT OF DELHI AND ORS.

.....Respondents

Through: Mr. Pradeep Gahalot, APP for the
State

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

ORDER

23.10.2024

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1. The present petition has been filed challenging the order dated 31.10.2023 whereby the learned Principal and Sessions Judge vide the impugned order dated 31.10.2023, allowed the application of the respondent Nos.2 to 5 to the extent that PW-1 and PW-3 were allowed to recall for further cross-examination on deposit of Rs.700/- by each accused persons and also subject to the availability of the witnesses. Learned Sessions Judge *inter alia* recorded that in case witnesses PW-1 and PW-3 are not available, the evidence already recorded shall be read as such.
2. The complainant has assailed this order on the ground that the learned Principal and Sessions Judge has passed the order without any reasons being given by the respondents for recalling PW-1 and PW-3 for the purpose of cross examination.



3. Learned counsel for the petitioner/complainant has taken this Court through orders dated 25.02.2021, 08.04.2021, 07.10.2021 and 06.05.2022 to buttress his point that sufficient opportunities had already been given for cross-examination. Learned counsel submits that the cross-examination was already once closed and again opportunity was given for the purpose of cross-examination. Learned counsel submits that even in the application dated 27.02.2023, no reason has been given for recalling the witnesses for the purpose of cross-examination.
4. Learned counsel for respondents No.2 to 5 has appeared through VC and submits that sufficient opportunities were given to examine the PW-1 and PW-3, yet they could not be cross-examined, and the learned Sessions Judge had passed a well-reasoned order.
5. It would be apposite to refer to Section 311 of CrPC, which reads as under:

311. Power to summon material witness, or examine person present. - Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.

[311-A. Power of Magistrate to order person to give specimen signatures or handwriting. [Inserted by Act of 2005, Section 27 (w.e.f. 23-6-2006).]

- If a Magistrate of the first class is satisfied that, for the purposes of any investigation or proceeding under this Code, it is expedient to direct any person, including an accused



person, to give specimen signatures or handwriting, he may make an order to that effect and in that case the person to whom the order relates shall be produced or shall attend at the time and place specified in such order and shall give his specimen signatures or handwriting: Provided that no order shall be made under this Section unless the person has at some time been arrested in connection with such investigation or proceeding.]

6. Section 311 of Cr.P.C. confers the revisional jurisdiction upon this Court to summon any person or recall any person/witness already examined for the purpose of re-examinations vis-a-vis appears that the person's evidence is essential to a just decision in the case. The bare perusal of Section 311 Cr.P.C. makes it clear that this provision has been there in order to aid the Court for the purpose of proper adjudication of the matter in dispute even the Court at *Suo Moto*, can order for recalling of any witness for the purpose of cross-examination.

7. In **Swapan Kumar Chatterjee v Central Bureau of Investigation**, (2019) 14 SCC 328, it was *inter-alia* held as under:

“11. It is well settled that the power conferred under Section 311 should be invoked by the court only to meet the ends of justice. The power is to be exercised only for strong and valid reasons and it should be exercised with great caution and circumspection. The court has wide power under this section to even recall witnesses for re-examination or further examination, necessary in the interest of justice, but the same has to be exercised after taking into consideration the facts and circumstances of each case. The power under this



provision 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.”

8. Learned Principal and Sessions Judge vide order dated 31.10.2023 has allowed the recalling of the PW-1 and PW-3 saying that they were not cross-examined formally as only suggestions had been put to them. It was further inter alia held that the effective cross-examination of PW-1 and PW-3 is necessary for the justice of the case as they are material witness.
9. It is correct that the repeated orders of the learned Trial Court as pointed out by the learned counsel for the petitioner show that the opportunities were available to the respondents for the purpose of cross-examination. However, the revisional jurisdiction available to the Court is very limited. The Court, in the revisional jurisdiction, can interfere only when there is patent illegality or infirmity in the order of the learned Trial Court. Merely, because one view has been taken by the Court, which may not be a probable or possible view, the Court, in its revisional jurisdiction, cannot set aside the same. The Trial Court is best to decide whether the witnesses are to be recalled for the purpose of cross-examination. I do not see any patent illegality or infirmity in the order of the learned Trial Court. However, in order to balance the interest of the parties, the cost is increased to Rs.15,00/- to be paid by each of the accused persons. The PW-1 and PW-3 be recalled subject to the cost and subject to the availability of the PW-1 and PW-3. In case the witnesses are not found available, the evidence already recorded shall be read as such.



10.Learned Trial Court is also requested to not to give any adjournment to the Respondent No.2 to 5 for the purpose of cross-examination of the witnesses unless except in exceptional circumstances.

11.In view of this, the present petition stands disposed of.

DINESH KUMAR SHARMA, J

OCTOBER 23, 2024

Pallavi/HT