



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

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Date of Decision: 16.04.2024

+ **CRL.M.C. 2987/2024, CRL.M.A. 11472/2024, CRL.M.A. 11473/2024**

NIKHAT PARVEEN @ KHUSBOO KHATUN

....Petitioner

Through: Mohd. Azam Ansari and Mr.
Abhishek Ray, Advocates.

Versus

RAFIQUE @ SILLU

.....Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT (ORAL)

1. By way of present petition filed under Section 482 Cr.P.C., the petitioner seeks setting aside of the judgment/order dated 06.04.2024 passed by learned ASJ-02, South East, Saket, New Delhi in CRL.A.61/2024 (hereinafter, '*impugned order*') whereby order dated 09.12.2023 passed by learned M.M. came to be upheld. Vide the order dated 09.12.2023, respondent's application seeking tendering of documents came to be allowed.

2. The facts, in a nutshell, are that respondent was allowed to lead evidence on an application filed under Section 311 Cr.P.C., which came to be allowed vide order dated 29.07.2023, subject to payment of cost. The respondent examined RW-2 and RW-3 in support of his defence and their examination-in-chief were recorded on 19.07.2023 whereas their cross-examination was deferred. On 09.12.2023, an application came to be filed on behalf of RW-3, thereby praying to place on record documents, which inadvertently could not be exhibited at the time of his evidence. The said



application came to be allowed by the Trial Court. The petitioner has objected to the said application being allowed on the ground that the same was in the teeth of Section 362 Cr.P.C. inasmuch as the learned MM is not competent to alter or review its own order. It is contended that by way of order dated 09.12.2023 seeks to review and alter its own order dated 19.07.2023, wherein the chief-examination and tendering of evidence on behalf of RW-3 was recorded.

3. Concededly, *Rafique @ Shillu* tendered his evidence as RW-3 and his examination-in-chief was undertaken on 19.07.2023. On the said date, pursuant to his examination-in-chief, his cross-examination was deferred. However, subsequently, an application was moved thereby seeking to tender certain other documents, which were inadvertently not tendered at the time of examination-in-chief of RW-3. While an objection was raised by the petitioner/complainant, the said objection was rejected and RW-3 was allowed to tender the said documents vide order dated 09.12.2023. An appeal under Section 29 of the Protection of Woman from Domestic Violence Act, 2005 (*DV Act*) came to be filed against the said order, which was dismissed vide the impugned order.

4. As noted in the order of the learned MM as well as the impugned order, the documents, which are sought to be exhibited by RW-3 are already part of the record inasmuch as they were filed alongwith written statement. The impugned order further notes that the said documents also finds mentioned in the evidence by way of affidavit, which was exhibited as Ex. RW3/1A. Thus, it was concluded that the said documents were already in the knowledge of the petitioner and non-tendering of these documents was an inadvertent error. Thus, allowing RW-3 to tender the same subsequently,



in a situation wherein the examination-in-chief had concluded and the cross-examination was yet to begin, would not cause any prejudice to the rights of the petitioner. The contention that the order by the learned MM runs afoul of Section 362 Cr.P.C., is of no assistance. The provision of Section 311 Cr.P.C is independent of Section 362 Cr.P.C which uses the expression 'judgment' or 'final order' thereby implying finality of the order. The impugned order thereby allowing for tendering of evidence does not in any manner lead to a situation wherein the learned MM has reviewed or altered its order. As noted above, on the date when the application for tendering of evidence was allowed, the cross-examination had not commenced.

5. Considering the aforesaid, I find no ground to interfere with the impugned order as well as the order passed by the learned MM. Consequently, the petition is dismissed alongwith pending applications.

MANOJ KUMAR OHRI
(JUDGE)

APRIL 16, 2024

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