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

+ CRL.M.C. 3255/2024, CRL.M.A. 12547/2024

RONIT PRASHANT GAHLOT

.....Petitioner

Through: Mr. Balram and Mr. Raman Kumar,
Advocates with petitioner in person.

versus

THE STATE OF (GOVT. OF NCT) DELHI & ANR.

.....Respondent

Through: Mr. Hemant Mehla, Ld. APP for State
with SI Mamta, P.S. Dwarka, Sector
23.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER

% **22.07.2024**

1. A Petition under Section 482 of Cr.P.C seeking quashing of Order dated 22.01.2024 and 22.03.2024 of learned ASJ has been filed.
2. Learned ASJ vide Order dated 22.01.2024 has dismissed the application under Section 311 Cr.P.C. filed on behalf of the petitioner/accused seeking permission to recall PW3/father of the victim for further cross-examination. It was submitted that after the evidence of the prosecution was recorded, the State with the permission of the Court examined PW5 a witness from CBSE to prove 10th class certificate of the victim. It was claimed that some new facts came to the knowledge of the petitioner/accused from the testimony of PW5 for which reason PW3 father of the victim is required to be cross-examined further.



3. Learned counsel for the petitioner has placed on record the judgment of Manju Devi vs. State of Rajasthan & Anr. CrI. Appeal No.688 of 2019 decided by the Apex Court on 16.04.2019, wherein it is observed that whenever a new witness is examined under Section 311 Cr.P.C the corresponding right to the accused for further cross-examination must not be denied and his application under Section 311 Cr.P.C for further cross-examination of the witnesses earlier recorded must be allowed.

Learned APP had opposed the application on the ground that the father of the victim had already been examined on 31.01.2020 and the application was filed after an inordinate delay.

4. The learned ASJ in the impugned Order dated 22.03.2024 observed that the charges had been framed against the petitioner/accused under Section 12 of POCSO Act and under Section 506 IPC and all the witnesses have already been examined. The prosecution evidence has been closed on 12.10.2023 and there was ample opportunity with the accused to move an application which he has failed to do within time. It is asserted that it is necessary to prove that the child was below the age of 18 years at the time of commission of offence, whereafter PW5 Mukesh Kumar has been examined by the prosecution. No new facts have been disclosed except that the counsel now representing the accused has been engaged recently. The re-examination of PW3 father of the victim was used to be without justification and the application under Section 311 Cr.P.C has been rejected.

5. **Submissions heard.**

6. Indisputably, after the prosecution had concluded their evidence, they sought permission under Section 311 Cr.P.C to examine the witness from the school to prove the age of the victim which was allowed vide Order



dated 19.09.2022. PW5 Sh. Mukesh Kumar, Jr. Assistant, CBSE Regional Office, Patparganj, was examined who has proved copies of the relevant records of the registers and the Mark Sheet of Secondary School Examination of the Session 2013-14 of the victim. According to the school record, the date of birth of the child is indicated as 22.07.1999.

7. Pertinently, the charges had been framed under Section 12 of the POCSO Act, whereby implying that the victim was a minor. This fact was well within the knowledge of the accused and at no point of time did he cross-examine the father or the prosecutrix in regard to the age. To assert that it is only after the examination of PW5 that some new facts have emerged, is totally untenable, especially when on specifically asked what these new facts were, there was no cogent response given by the learned counsel for the petitioner except that he has been engaged subsequently by the petitioner. It is quite evident that endeavour to recall PW3 is not because there is any new fact which has emerged, but because the counsel intends to further cross-examine PW3, for which there is no basis.

8. The judgment of Manju Devi (Supra) relied upon by the learned counsel for the petitioner is not applicable to the present facts, as no new fact which was not within the knowledge of the petitioner, has been disclosed by PW5 who has merely produced the school record in proof of age of the victim.

9. The application under Section 311 Cr.P.C has been rightly dismissed by the learned ASJ to this extent and there is no ground to interfere with the said Order.

10. The petitioner has also challenged the Order dated 22.03.2024 vide which the right of the petitioner/accused to lead his evidence has been



closed. The statement of the accused has been recorded on 23.02.2024. The petitioner was directed to submit his list of witnesses within seven days, which he sought to tender on the next date of hearing, which was declined by the learned ASJ. There may have been some delay on the part of the petitioner to furnish the list of witnesses or to produce them, but it cannot be overlooked that it is a valuable right and the petitioner should not be stopped from producing material evidence in his defence. The list of three witnesses has been submitted by the petitioner who are Sh. Kuldeep Kumar Gahlot his father, Ms. Kirti and Ms. Manju.

11. The impugned Order dated 22.03.2024 is hereby set aside to this extent and two opportunities are given to the petitioner/accused to adduce his entire evidence. No further opportunity after due dates shall be given. It is further clarified that the witnesses shall be produced by the accused/petitioner on his own responsibility.

12. The petition is accordingly disposed of.

NEENA BANSAL KRISHNA, J

JULY 22, 2024/va