



\$~123

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

+ **CRL.M.C. 3260/2024**

AJAY KUMAR KHANWAR

..... Petitioner

Through: **Mr. Rohit Bansal, Advocate.**

versus

STATE (GOVT.OF NCT OF DELHI)

..... Respondent

Through: **Ms. Shubhi Gupta, APP with SI
Chandan Rajput, PS: V.K. North, for State.**

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

26.04.2024

%

CRL.M.A. 12573/2024 (Exemption)

1. Allowed, subject to all just exceptions.
2. Application stands disposed of.

CRL.M.C. 3260/2024 and CRL.M.A. 12574/2024 (for stay)

3. This petition has been filed by the Petitioner under Section 482 Cr.P.C. seeking quashing of order dated 18.01.2024 passed by learned MM-02, Patiala House Courts, New Delhi in Cr. Case 51412/2016 filed under Sections 279/337/338/304A IPC titled "*State v. Ajay Kumar*", whereby PW-2 Vinod was examined and discharged. Rehearing of the application filed by the prosecution under Section 311 Cr.P.C. for recalling PW-2 has also been sought.
4. An FIR was registered against unknown persons on 05.11.2010 alleging that a motorcycle, driven by the Petitioner had slipped and the

CRL.M.C. 3260/2024

Page 1 of 4



deceased was a pillion rider when the accident occurred. During investigation, pillion rider Sanjay Sharma died and Section 304A IPC was added. Petitioner, who is also injured, revealed that a car had hit their motorcycle. He was treated at hospital where he underwent a spine surgery. Final report was filed against unknown persons followed by a supplementary Charge Sheet. During trial on 31.08.2017, PW-2 Vinod was dropped by the prosecution from the list of witnesses. On 27.02.2023, an application under Section 311 Cr.P.C. was filed by the prosecution and was allowed recalling PW-2. Arguments were heard in the absence of the Petitioner, who is an accused in the present matter. This order was challenged before this Court in CRL.M.C. 3501/2023 and by order dated 16.05.2023, learned MM was directed to re-hear the application after giving opportunity to the counsel for the Petitioner to contest the same.

5. According to the Petitioner, on the next two dates of hearing, the learned MM was on leave. On 18.01.2024, learned MM was on short leave and date was given to the Petitioner in the morning by the Reader. On account of this, the counsel for the Petitioner also did not come to the Court. However, it was subsequently learnt that later in the day, PW-2 was examined and discharged, without giving an opportunity to the Petitioner to cross-examine him.

6. Learned counsel for the Petitioner states that conducting the examination of PW-2 in the absence of the accused or his counsel is in violation of Section 273 Cr.P.C. and in the teeth of the order of this Court dated 16.05.2023. The evidence of PW-2 incorrectly records the presence of accused as he had already left the Court on being told that the Court was not assembling.



7. Issue notice.
8. Ms. Shubhi Gupta, learned APP accepts notice on behalf of the State.
9. At the outset, learned counsel for the Petitioner, candidly and fairly submits that the Trial Court was on leave after this Court had passed an order directing re-hearing of the recall application and he could not bring the order to the notice of the Court and there is a possibility that the order may not have reached the Court in the ordinary course and the Court was thus unaware of the directions passed by this Court.
10. Heard.
11. Record shows that PW-2 was dropped by the prosecution from the list of witnesses on 31.08.2017 but subsequently an application filed under Section 311 Cr.P.C. was allowed recalling him for evidence. In the earlier round of litigation, this Court noted that the application was heard in the absence of the counsel for the Petitioner and directed the learned MM to hear the application afresh after giving opportunity to the Petitioner to contest the same. There is no clarity at the stage on whether the order was in the knowledge of learned MM or not. Be that as it may, the directions issued by this Court on 16.05.2023 need to be complied with as the hearing of the application under Section 311 Cr.P.C. in the first instance was in violation of the principles of natural justice and provisions of Sections 311 and 273 Cr.P.C.
12. Accordingly, the impugned order dated 18.01.2024 to the extent of recording the evidence PW-2 Vinod and discharging him is hereby set aside. Learned MM is directed to hear the application under Section 311 Cr.P.C. after giving an opportunity to the Petitioner to contest the same, in compliance with the order dated 16.05.2023, passed by this Court.



13. Petition is allowed and disposed of with the aforesaid directions.
Pending application also stands disposed of.

JYOTI SINGH, J

APRIL 26, 2024/B.S. Rohella