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

+ CRL.M.C. 4176/2023 & CRL.M.A. 15676/2023

ROBIN @ ARYAN

..... Petitioner

Through: Mr. Kartik Gupta and Mr. Aman
Deep, Advocates.

versus

THE STATE OF NCT OF DELHI & ANR RespondentS

Through: Mr. Sanjeev Sabharwal, APP for State
with Inspector Virender Kumar with
WHC Sukanya and HC Anuj Kumar
with respondent No2 in person.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

13.05.2024

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1. By way of present petition filed under Section 482 Cr.P.C, the petitioner impugns the order dated 23.02.2023 passed by the learned ASJ, Special Court, FTSC (POCSO)-03, South West District, Dwarka Court, Delhi in SC No.332/2021 emanating from case FIR No.44/2021, PS Kapashera, Delhi.
2. Additionally, the petitioner seeks expunction of the deposition recorded on 25.04.2023 in pursuance of the impugned order dated 23.02.2023.
3. The facts, as apparent from the record, are that the petitioner is facing trial in the aforesaid FIR registered under Sections 363, 328, 366A, 370, 376D, 506, 468, 471, 474, 323, 324, 34 IPC read with Section 6 POCSO Act, Section 75 J.J.Act and Sections 3, 5 I.T.P. Act.



4. Learned counsel for the petitioner states that the prosecutrix was examined on 24.03.2022 and 25.03.2022 and was cross-examined as well. Subsequently, the prosecutrix was recalled for further examination on 09.02.2023. He further submits that the said examination was directed without the knowledge of the petitioner as no notice in regards to the same was issued. Additionally, he submits that vide the impugned order, the prosecutrix has now been recalled for the third time on the ground that she needs to be confronted with the CCTV footage and FSL report. He submits that since the said documents are already on record, the prosecutrix cannot be allowed to be recalled time and again as the same is in the teeth of Section 33(5) of the POCSO Act.

5. Learned APP for the State on the other hand has defended the impugned order.

6. It is contended by the petitioner that the prosecutrix was first recalled 09.02.2023 without notice to the petitioner/accused. The copy of the cross examination is placed on record, a perusal of which would show that the prosecutrix was cross-examined by learned counsel for the co-accused Anshu and that the said recall did not pertain to the present petitioner. Additionally, a perusal of the order dated 09.02.2023 would show that the same was passed in the presence of the learned counsel for the petitioner/accused.

7. The impugned order was passed on 23.02.2023, before the petition was filed. In the meantime, the prosecutrix was already recalled and also examined on 25.04.2023. The reason for her recall was duly noted in the impugned order as it was stated that during the investigation, the FSL and CCTV footage was sent for examination and the same could not be put to



the prosecutrix as the earlier examination was conducted by a substitute APP for the State, the regular APP being not available. The copy of the first examination-in-chief dated 24.03.2022 and 25.03.2022 is also placed on record. A perusal of the said examination-in-chief would show that it was conducted by a substitute prosecutor and not by the regular APP, as finds mentioned in the depositions itself. Further, from the perusal of deposition, it is discernible that the FSL and CCTV footage which were collected during investigation were not put to the prosecutrix.. Considering the offences invoked in the present case, there is no merit in the petition and the same is dismissed.

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

9. A copy of this order be sent to the concerned Trial Court for compliance.

MANOJ KUMAR OHRI, J

MAY 13, 2024/rd