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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CRL.M.C. 3725/2024, CRL.M.A. 14281/2024 &
CRL.M.A. 14282/2024
PANKAJ Petitioner

Through: Mr. Pradeep Kumar, Mr.
Anshul Dokhoria, Mr.
Surender Kumar, Mr. Dani
Uja, Ms. Ashish Gupta,
Ms. Anailu Hakung,
Advocates.

versus

THE STATE GNCT OF DELHI
AND ANR & ANR. Respondents

Through: Mr. Pradeep Gahalot, APP
for the State alongwith
Ms. Nupur Saini & Ms.
Annushri Bhardwaj,
Advocates & SI Ayushi
(P.S. Bhalswa Dairy).

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER
09.05.2024

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1. The present petition is filed under Section 482 of the Code of Criminal Procedure, 1973 ('CrPC'), challenging the order dated 05.04.2024 (hereafter '**impugned order**'), passed by the learned Additional Sessions Judge-05 (POCSO) (North) Rohini Courts, Delhi ('**ASJ**'), in SC No. 58189/2016.

2. The learned ASJ, by the impugned order, dismissed the application filed by the petitioner under Section 311 of the CrPC, seeking opportunity to cross-examine PW-4,5,7 and 8 on the ground that sufficient opportunity to cross-examine the said witnesses was granted to the petitioner/accused and noted as under :



“6. Present case pertains to the year 2014. Record reveals that PW-4 was examined in July, 2017 while PW-5 and PW-7 were examined in May, 2018 and PW-8 was examined in October, 2018. Sufficient opportunity to cross-examine all the above mentioned witnesses was granted to the accused. Despite that the opportunity to cross-examine PW-4, 5 and 8 was not availed by the accused. Opportunity to cross-examine PW-7 was sufficiently availed on behalf of the accused. PW-5 and PW-8 are witnesses of record who produced the relevant records in the Court. PW-7 has not deposed anything against the accused regarding commission of alleged offence. No reason is given on behalf of accused for moving the present application such a belated stage when the matter was fixed for recording the statement of accused.

7. Considering the above discussed facts that PW-5 and PW-8 are only the witnesses of record and opportunity to cross-examine PW-7 has already been availed by accused and further the fact that no application to cross-examine PW-4 since ' July, 2017 is moved on behalf of accused, Court is of considered opinion that no ground for grant of any further opportunity to accused to cross-examine the above mentioned witnesses is made out at this stage. The application is accordingly dismissed and disposed of.”

3. The learned counsel of the petitioner submits that the application preferred by the petitioner under Section 311 of the CrPC has been erroneously dismissed. He submits that due to hectic schedule and inadvertence of the Counsel PW-4, 5, 7, 8, 9, 12, 13, 14 could not be cross-examined.

4. Section 311 of the CrPC is a procedure for recall of witnesses which can be permitted in order to prevent failure of justice and is not to be allowed in every case in a mechanical manner. The applicant seeking recall under Section 311 of the CrPC, has to specifically show and give tangible reasons as to how the fairness of trial will suffer.

5. It is not denied that sufficient opportunity was given to the learned counsel for the petitioner to cross-examine the witness



however, due to his own inadvertence and delay on his part, he could not avail the said opportunity.

6. In such a case, it cannot be said that the petitioner did not understand the consequences or that he was bereft of proper legal assistance during the stage of cross-examination.

7. The Hon'ble Supreme Court in ***Swapan Kumar Chatterjee v. CBI : (2019) 14 SCC 328*** while observing that power to summon or recall witnesses at any stage of the trial should be exercised sparingly and only when necessary to achieve the ends of justice 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 vide 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.

12. Where the prosecution evidence has been closed long back and the reasons for non-examination of the witness earlier are not satisfactory, the summoning of the witness at belated stage would cause great prejudice to the accused and should not be allowed. Similarly, the court should not encourage the filing of successive applications for recall of a witness under this provision.”

8. Witnesses should not be subjected to face hardship of appearing in the Court belatedly, especially when the right to cross-examine the witnesses was foreclosed after due and fair opportunity was given to the petitioner in the year 2017. It is also apparent that the only purpose of filing the application was to delay the proceedings.

9. The application under Section 311 for recall of witnesses was filed on 02.05.2024.



10. The learned ASJ in the impugned order noted that PW4 was examined way back in the year 2017 and ample opportunity was given to the petitioner to cross examine. It also noted that opportunity to cross examine PW7 was sufficiently availed and he has not deposed anything against the petitioner. PW5 and PW8 are only the witnesses for the production of relevant record. PW5, 7 & 8 were examined in the year 2018. The learned ASJ noting the said fact dismissed the application filed by the petitioner under Section 311.

11. It is apparent from the perusal of the application filed by the petitioner that nothing has been pleaded which would justify the recall of witnesses or which is essential for a just decision of the case. Vague averments have been made that recall of the witnesses is required as the petitioner failed to examine certain important aspects that were vital to the case. The petitioner has not indicated what are these factors, or how they escaped the notice of the petitioner for seven years. Allowing such delayed applications to address the lacuna which are left in the examination after almost seven years would undermine the fairness and efficiency of the trial process, which should ideally be swift and conclusive to uphold principles of justice.

12. In view of the above, this Court finds no infirmity with the impugned order passed by the learned ASJ, and the present petition being without any merits is dismissed. Pending application is also disposed of.

AMIT MAHAJAN, J

MAY 9, 2024

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