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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.REV.P. 1047/2024**

RAVIKANT

.....Petitioner

Through: Mr. J.P. Singh & Mr.
Himanshu Sihag, Advs.

versus

THE STATE NCT OF DELHI

.....Respondent

Through: Mr. Naresh Kumar
Chahar, APP for the State.
SI Suman, PS Dwarka
South.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

% **26.09.2024**

CRL.M.A. 27202/2024 (for preponement)

1. For the reasons stated in the application, the same is allowed.

2. The application stands disposed of.

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3. The present petition is filed challenging the order dated 26.07.2024 (hereafter '**the impugned order**') passed by the learned Mahila Court, Dwarka Courts, Delhi in Cr. Case No. 7818/2021, pursuant to which the application filed by the petitioner under Section 348 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ('**BNSS**') [corresponding Section 311 of the CrPC] was dismissed.

4. Briefly stated, the FIR in the present case was registered on a complaint made by the complainant alleging that on 29.04.2021, the petitioner/accused, who was driving the bus,

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restrained the complainant and used criminal force upon her with the intent to outrage her modesty.

5. The petitioner had sought the cross examination of PW1, PW-2 & PW-3. They were examined on 29.03.2023, 30.10.2023 & 12.01.2024 respectively.

6. The application seeking their cross examination was filed thereafter belatedly on 22.07.2024. The learned Trial Court noted that the PW-1 was cross examined on 29.03.2023 and cross examination was deferred on the request of the proxy counsel who had appeared for the petitioner / accused on the ground of non-availability of the main counsel.

7. On the next date of hearing, PW-1 had appeared and again adjournment was sought for the same reason which was again allowed by the learned Trial Court. On the next date, that is, on 22.07.2023, the petitioner / accused was absent and the cross examination was closed. NBWs were also issued on account of his non-appearance. On a following date, that is, on 05.09.2023, the petitioner appeared along with his counsel and sought cancellation of NBWs which was allowed subject to payment of cost.

8. It is pertinent to note that no application seeking cross examination of PW-1 was filed at that stage. On the next date of hearing, PW-2 was examined and the opportunity to cross examine was granted to the petitioner / accused, which was not availed and the PW-2, who at the relevant time of the incident, was Assistant Sub-Inspector and posted at Dwarka, was discharged.

9. PW-3 was thereafter examined on 12.01.2024 and though the opportunity was given but he was not cross examined. The



matter thereafter was posted for recording statement of the petitioner / accused and to lead defence evidence. No application for seeking cross examination of the witnesses was filed.

10. It is undisputed that no defence evidence was also led by the petitioner / accused and the defence evidence was closed on the submissions made by the learned counsel for the petitioner. The matter was thereafter fixed for final arguments.

11. Thereafter, further dates were given, however, repeated adjournments were taken by the petitioner and the matter was closed on 16.07.2024 and was fixed for judgment on 26.07.2024. It is at that stage; an application was finally filed by the petitioner / accused under Section 348 of the BNSS.

12. Section 311 of the CrPC reads as under:

“311. Power to summon material witness, or examine person present.

Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.”

13. 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. It is not in doubt that the learned Trial Court has power under Section 311 of the CrPC to summon witness and call for evidence at any stage if it is felt that the same is required for a just decision of the case. The power, however, is not to be exercised in routine manner.

14. It is trite law that the Court can summon a person at any stage of the trial if the evidence of such a person is essential for



the just decision of the case. The power under Section 311 of the CrPC is wide in nature and the same can be exercised to summon or recall witnesses at any stage of trial if the Court deems that the same is necessary to reach a just decision [*Natasha Singh v. CBI: (2013) 5 SCC 741*].

15. The Hon'ble Apex Court in the case of *Rajaram Prasad Yadav v. State of Bihar : (2013) 14 SCC 461* discussed a number of decisions and underlined the principles to be considered while dealing with an application under Section 311 of the CrPC. The relevant portion of the same is reproduced hereunder:

“17. From a conspectus consideration of the above decisions, while dealing with an application under Section 311 CrPC read along with Section 138 of the Evidence Act, we feel the following principles will have to be borne in mind by the courts:

17.1. Whether the court is right in thinking that the new evidence is needed by it? Whether the evidence sought to be led in under Section 311 is noted by the court for a just decision of a case?

17.2. The exercise of the widest discretionary power under Section 311 CrPC should ensure that the judgment should not be rendered on inchoate, inconclusive and speculative presentation of facts, as thereby the ends of justice would be defeated.

17.3. If evidence of any witness appears to the court to be essential to the just decision of the case, it is the power of the court to summon and examine or recall and re-examine any such person.

17.4. The exercise of power under Section 311 CrPC should be resorted to only with the object of finding out the truth or obtaining proper proof for such facts, which will lead to a just and correct decision of the case.

17.5. The exercise of the said power cannot be dubbed as filling in a lacuna in a prosecution case, unless the facts and circumstances of the case make it apparent that the exercise of power by the court would result in causing serious prejudice to the accused, resulting in miscarriage of justice.

17.6. The wide discretionary power should be exercised judiciously and not arbitrarily.



17.7. The court must satisfy itself that it was in every respect essential to examine such a witness or to recall him for further examination in order to arrive at a just decision of the case.

17.8. The object of Section 311 CrPC simultaneously imposes a duty on the court to determine the truth and to render a just decision.

17.9. The court arrives at the conclusion that additional evidence is necessary, not because it would be impossible to pronounce the judgment without it, but because there would be a failure of justice without such evidence being considered.

17.10. Exigency of the situation, fair play and good sense should be the safeguard, while exercising the discretion. The court should bear in mind that no party in a trial can be foreclosed from correcting errors and that if proper evidence was not adduced or a relevant material was not brought on record due to any inadvertence, the court should be magnanimous in permitting such mistakes to be rectified.

17.11. The court should be conscious of the position that after all the trial is basically for the prisoners and the court should afford an opportunity to them in the fairest manner possible. In that parity of reasoning, it would be safe to err in favour of the accused getting an opportunity rather than protecting the prosecution against possible prejudice at the cost of the accused. The court should bear in mind that improper or capricious exercise of such a discretionary power, may lead to undesirable results.

17.12. The additional evidence must not be received as a disguise or to change the nature of the case against any of the party.

17.13. The power must be exercised keeping in mind that the evidence that is likely to be tendered, would be germane to the issue involved and also ensure that an opportunity of rebuttal is given to the other party.

17.14. The power under Section 311 CrPC must therefore, be invoked by the court only in order to meet the ends of justice for strong and valid reasons and the same must be exercised with care, caution and circumspection. The court should bear in mind that fair trial entails the interest of the accused, the victim and the society and, therefore, the grant of fair and proper opportunities to the persons concerned, must be ensured being a constitutional goal, as well as a human right.

(emphasis supplied)

16. This Court has also gone through the contents of the



application. No reasons have been mentioned as to what is the prejudice caused or the purpose of cross examination of the witnesses. Only ground taken is that the witnesses are material witnesses and the text of number of Hon'ble Supreme Courts's judgments has been quoted in the application.

17. As noted by the learned Trial Court, the conduct of the petitioner shows that only purpose seems to be delaying the trial.

18. In view of the above, this Court finds no infirmity with the impugned order, and the present petition being without any merits is dismissed.

19. The date already fixed, that is, on 25.11.2024 stands cancelled.

AMIT MAHAJAN, J

SEPTEMBER 26, 2024

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