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

+ CRL.M.C. 170/2024 & CRL.M.A. 691/2024

DEVENDER MOHAN SINGH NEGI & ANR.

..... Petitioners

Through: Adv. Prateek Jindal with
petitioner.

versus

STATE GOVT. OF NCT OF DELHI AND ANR.

..... Respondents

Through: Mr. Pradeep Gahlot, APP
for the State with SI Vijay
Pal Singh, PS CWC.
Ms. Inderjeet Sidhu with
Mr. Shyam Rai, Akshay
Kumar, Advs. for R-2.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

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07.02.2024

1. The present petition is filed under Section 482 Code of Criminal Procedure, 1973, (Cr.P.C) impugning order dated 24.11.2023, passed by the learned Metropolitan Magistrate (MM), Mahila Court-01, South West, Dwarka Courts, New Delhi in FIR No.30/2009, under Section 406/498-A/34 IPC registered at PS CAW Cell, Nanak Pura (hereafter '**the impugned order**')
2. The learned MM by way of the impugned order had dismissed the application filed by the petitioner under Section 311 Cr.P.C. The said application was filed by the petitioner seeking his re-examination as DW1. The application was filed on the ground that certain errors have crept while recording of the evidence. The learned MM noted that power under Section 311 Cr.P.C cannot be exercised to re-record a testimony or to correct



any typographical errors.

3. The application under Section 311 Cr.P.C gives power to the Trial Court to summon any person as a witness at any stage of an enquiry / trial or other proceedings under the Cr.P.C., if the Court is of the opinion that his evidence would be essential to the just decision of the Court. The application by the petitioner was not filed for the reasons that any evidence has to be led for the purpose of Court to arrive at a just decision. The application was essentially filed since as per the petitioner certain typographical errors had crept in the recording of the evidence.

4. The learned counsel for the petitioner submits that certain suggestions were put to the petitioner / DW1 which were denied. He submits that parties are litigating in relation to matrimonial disputes and the petitioner by no means would have accepted those suggestions which are detrimental to his own defences. He submits that these were formal suggestions and the Stenographer of the Court appears to have inadvertently recorded the same.

5. It is pertinent to note that the learned Additional Public Prosecutor for the State even before the learned Trial Court had accepted that the suggestions put to the accused were recorded wrongly and the word “not” was omitted in some of the suggestions as pointed out. The learned Trial Court also noted that the fact that the grammatical errors have crept in the recording of the evidence can be considered at the time of final arguments.

6. Though the fact that the grammatical errors have occurred in the recording of the evidence is not disputed, and the learned Trial Court had clarified that same would be considered at an appropriate stage, the learned counsel for the petitioner raises an apprehension that the complainant might take advantage of these



grammatical errors.

7. I find no infirmity in the order passed by the learned Trial Court. The learned Trial Court rightly held that the grievance agitated by the petitioner does not fall within the ambit of Section 311 of the CrPC. When the fact that the suggestions were inadvertently recorded incorrectly is admitted by the State, the same, in the opinion of this Court, do not require any clarification. However, keeping in view the fact that the State has admitted that if the recording of the evidence suffers from grammatical error and the fact that no prejudice would be caused if the same is rectified, this Court considers it apposite to clarify and direct that the cross-examination of the petitioner/ DW-1 recorded on 28.09.2019 be read as under:

“XXXX by Ld. APP for the State.

It is wrong to suggest that my marriage was not a simple and dowry less marriage. It is wrong to suggest that I did not incur all the expenses of delivery of my daughters. It is wrong to suggest that Ex.DW1/3 (colly) are false and fabricated. It is wrong to suggest that my wife Aradhana was not quarrelsome, short tempered, immature and manner less lady. It is wrong to suggest that I was not happy with the birth of my twin daughters and that I did not take good care of them.

It is wrong to suggest that on 13.01.2005, Aradhana did not pick up a quarrel with my mother. It is wrong to suggest that she did not call for a truck and told me that she was leaving the house. It is wrong to suggest that Ex.DW1/4 was written by Aradhana under pressure by me and my family or that it was not a free statement made by her. It is wrong to suggest that on 19.09.2005, Ardhana did not again pick up a quarrel for sending the kids to crech. It is wrong to suggest that that Aradhana did not demand to take a separate accommodation as she did not want to live in a joint family.

It is wrong to suggest that she did not threaten us of complaining in women cell and police and framing us in a false case. It is wrong to suggest that Aradhana did not write a note Ex.DW1/5 freely and without pressure. It is wrong to suggest that Aradhana did not take all her costly belongings and jewellery with her. It is wrong to suggest that Aradhana did not come to



our house on 25.09.2005 alongwith her father and brother and on that day, she took all her belongings with her in a truck.

It is wrong to suggest that I commit any cruelty upon Aradhana for demand of dowry. It is wrong to suggest that I did not try to reconcile the matter with Aradhana. It is wrong to suggest that all the belongings of Aradhana are at my house. It is wrong to suggest that all her stridhan articles are in my possession. It is wrong to suggest that I am deposing falsely in order to save myself from the rigours of law in this case.”

8. No further orders are required. The petition is disposed of.

AMIT MAHAJAN, J

FEBRUARY 7, 2024

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