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

+ **CRL.REV.P. 1103/2024 & CRL. MAs 26898-99/2024**

ROHTAS

.....Petitioner

Through: Mr. Rajesh Prasad Pandey, Advocate.

versus

STATE OF NCT DELHI AND ANR

.....Respondents

Through: Mr. Sanjeev Sabharwal, APP for State
with SI Swati (M:8800886267).

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

06.09.2024

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1. By way of present revision petition, the petitioner seeks to assail the order dated 05.03.2024 vide which the petitioner's application under Section 311 Cr.P.C. to recall PW-1/chid victim was dismissed by the learned Trial Court.

2. A perusal of the impugned order reveals that the child victim had appeared for examination-in-chief on 21.11.2023. The cross-examination could not be done as the main counsel was stated to be indisposed. The matter thereafter was adjourned to 07.12.2023, when the child victim could only be partly examined. The matter was then posted for 08.12.2023 and on which date, learned counsel for the petitioner did not appear on account of illness of his grandmother. The matter was again posted for 10.01.2024, on which date, the victim did not appear. Pertinently, on 13.02.2024, the child victim made a complaint that sister and mother of the accused had come to her house and asked her to turn hostile and in lieu thereof promised to help the child victim in her studies. The victim had also stated that and she and



her mother were taken to Saket Courts on 12.02.2024 whereby they were met with two advocates who advised them not to support the prosecution case. The matter was thereafter posted for 13.02.2024, when again counsel for the accused/petitioner failed to appear. Noting the allegations made by the child victim, the learned Trial Court has already given directions to the DCP concerned to conduct an inquiry.

3. POCSO Act is a special legislation, which was enacted with the aim of protecting children from sexual offences and for safeguarding the interests and ensuring the well-being of the child at every stage of trial. Section 3(5) of POCSO Act puts upon the Special Court the responsibility of ensuring that the child witness is not called repeatedly to testify in the Court. The Supreme Court recently in the case of Madhab Chandra Pradhan & Ors v. State of Odisha, vide order dated 05.08.2024 in **SLP (Crl.) No. 10082 of 2024** held as follows :

4...A bare perusal of Section 33 (5) of the Act indicates that a duty is cast upon the Special Court to ensure that a child is not repeatedly called to give his/her testimony before the court. The legislative intent behind this provision is clear. It is to ensure that the child who has suffered a traumatic experience of sexual assault is not called time and again to testify about the same incident.

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5...We are of the considered opinion that although Section 33 (5) would not act as an absolute bar to recall the victim for re-examination as a witness, each case must be looked at in the context of its individual facts and circumstances...

4. Considering the aforesaid facts and circumstances and the import of Section 33(5) POCSO, I do not find any merit in the present revision



petition and the same is accordingly dismissed along with pending applications.

MANOJ KUMAR OHRI, J

SEPTEMBER 6, 2024/rd