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

+ **CRL.REV.P. 89/2024**

RISHABH AGGARWAL

..... Petitioner

Through: Mr.F.S. Chauhan, Ms.Usha
Kashyap, Advs.

versus

STATE OF NCT OF DELHI & ANR. Respondents

Through: Ms.Priyanka Dalal, APP with
W/SI N. Tiamenla.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

% **22.01.2024**

CRL.M.A. 1965/2024 (Exemption)

1. Allowed, subject to all just exception.

CRL.REV.P. 89/2024 & CRL.M.A. 1964/2024, 1966/2024

2. This petition has been filed challenging the order dated 25.11.2023 passed by the learned Additional Sessions Judge (SC-RC), East District, Karkardooma Courts, Delhi in SC Case No.257/2022, titled *State v. Rishabh Aggarwal*, dismissing the application filed by the petitioner herein under Section 311 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.') seeking recalling of the prosecutrix for her further cross-examination.

3. The learned counsel for the petitioner submits that the petitioner was represented by another counsel when the cross-examination of the prosecutrix was recorded by the learned Trial Court, and the erstwhile counsel failed to confront the prosecutrix with the statement recorded under Section 164 of Cr.P.C. on 25.04.2022 by the learned Metropolitan Magistrate, wherein she had stated that she had filed the



complaint only because the petitioner had refused to marry her and now wishes to withdraw her complaint, as the petitioner is ready to marry her. He submits that the cross-examination of the prosecutrix was wanting in other aspects also, because of which grave prejudice would be caused to the petitioner in his defence. The allegations against the erstwhile counsel have also been made regarding some financial impropriety.

4. On the other hand, the learned APP for the State submits that in the present case, as the Impugned Order itself records, the petitioner was found threatening the prosecutrix, and in fact, had even beaten her, and for this reason, by an order dated 12.07.2023, he had to be taken into Judicial Custody. She submits that there is a detailed cross-examination of the prosecutrix conducted by the petitioner and only because of the change of the counsel, the petitioner cannot be allowed to turn the clock back and recall the prosecutrix for further cross examination.

5. I have considered the submissions made by the learned counsels for the parties.

6. In the present case, the Impugned Order itself records that as the petitioner was found threatening the prosecutrix, and was even beating her, he was taken into Judicial Custody by the order dated 12.07.2023. I also find that there is a detailed cross-examination of the prosecutrix. The relevance of the statement of the prosecutrix that was recorded under Section 164 of the Cr. P.C. is a matter to be determined by the learned Trial Court. As rightly recorded by the learned Trial Court, merely because there is a change of a counsel, the same is not a



ground to recall the witness especially in the matter such as the present one.

7. The Supreme Court in its judgment of *State (NCT of Delhi) v. Shiv Kumar Yadav*, (2016) 2 SCC 402, has held that merely because the previous counsel did not conduct the cross examination properly, the same cannot be a ground to recall a witness for examination. The relevant observations on this aspect read as under:

“15. While advancement of justice remains the prime object of law, it cannot be understood to mean that recall can be allowed for the asking or reasons related to mere convenience. It has normally to be presumed that the counsel conducting a case is competent particularly when a counsel is appointed by choice of a litigant. Taken to its logical end, the principle that a retrial must follow on every change of a counsel, can have serious consequences on conduct of trials and the criminal justice system. The witnesses cannot be expected to face the hardship of appearing in court repeatedly, particularly in sensitive cases such as the present one. It can result in undue hardship for the victims, especially so, of heinous crimes, if they are required to repeatedly appear in court to face cross-examination...”

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29. We may now sum up our reasons for disapproving the view of the High Court in the present case:

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(vii) mere change of counsel cannot be ground to recall witness...”

8. Keeping in view the above facts and the judgment of the



Supreme Court, I find no merit in the present petition. The same is accordingly dismissed.

NAVIN CHAWLA, J

JANUARY 22, 2024/Arya/am

Click here to check corrigendum, if any