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

+ CRL.REV.P. 333/2024 & CRL.M.A.Nos.7610-11/2024

BHIM GAUTAM

..... Petitioner

Through: Mr. Sanjeev Kumar,
Ms. Srishti Aggarwal &
Mr. Subhash Chand Goyal,
Advocates

versus

THE STATE GNCT OF DELHI

..... Respondent

Through: Mr. Hitesh Vali, APP for
the State with SI Manjit
Singh, PS Kirti Nagar.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

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11.03.2024

1. The present petition is filed under Section 397 read with Sections 401 and 482 of the Code of Criminal Procedure, 1973, challenging the order dated 18.10.2023 (hereafter '**the impugned order**'), passed by the learned Additional Sessions Judge ('**ASJ**'), West District, Tis Hazari Courts, Delhi, in SC No. 668/2017 arising out of FIR No. 343/2017 dated 01.10.2017, registered at Police Station Kirti Nagar.

2. The learned ASJ, by the impugned order, dismissed the application filed by the petitioner under Section 45 read with Section 73 of the Indian Evidence Act, 1872. The petitioner, by the said application, had sought comparison of the handwriting on Ex.DW-1/A-1 to Ex.DW-1/A-6 with the handwriting of the victim from any Government expert.

3. The learned counsel for the petitioner claims that the exhibits in question, admittedly, were written by the victim. He submits that the victim had also verbally admitted that she had written the said letters.

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4. He submits that it is only when the prosecution raised objection with the handwriting of the victim during the cross examination of the accused/ petitioner, that the necessity to file an application arose. He further submits that the said letters *prima facie* show that the case of the prosecution is false.

5. The present case relates to offences under Sections 363/366/342/376(2)(i)/506 of the Indian Penal Code, 1860 ('**IPC**') and Section 6 of the Protection of Children from Sexual Offences Act, 2012 ('**POCSO Act**'). FIR No.343/2017 was lodged at the instance of the father of the victim. It is alleged that the victim, who was a minor at that time, had gone outside at about 5 pm, whereafter, when she did not return home, a search was conducted for the victim in the vicinity. When the victim was not found, an FIR under Section 363 of the IPC came to be registered.

6. It is alleged that the aunt (*tai*) of the victim recovered her from the custody of the petitioner. During the course of the investigation, Sections 342/366/376(2)(i)/506 of the IPC and Section 6 of the POCSO Act. It is the case of the prosecution that the petitioner had kept the victim in the *chappar* in his field for two days and had sexually assaulted her there without her consent. It is also alleged that the petitioner had threatened the victim that he will kill her brother.

7. The learned ASJ noted that during the cross examination of the victim no such letters, that is, Ex.DW-1/A-1 to Ex.DW-1/A-6, were put to the victim. The cross examination was concluded way back on 20.01.2018 and the letters were produced by DW-1 (father of the petitioner) during his examination on 15.02.2021. The learned ASJ further noted that despite the possession of the letters, no efforts were made to put the same to the victim at appropriate time.



8. Even though it is correct that the application for production of the evidence can be filed at any stage, however, when the petitioner was admittedly in possession of the letters since 2018, no worthy reason has been given as to why the application was filed at such a belated stage in the year 2023 when the trial got over and the matter is fixed for final arguments.

9. The power of the learned Trial Court to allow production of evidence at a belated stage is to be exercised only for strong and valid reasons and has to be exercised with great caution and circumspection. The power can be exercised if it is found necessary in the interest of justice, however, the facts and circumstances of each case have to be taken into consideration. The Court has to be satisfied that exercise of such power should not lead to abuse of the process of law.

10. In the present case, it is contended that certain letters were written by the victim. It is submitted that the prosecution has raised objection in regard to the handwriting of the victim in these letters. The petitioner, during the course of trial, was at liberty to produce appropriate defence evidence in support of his case. It is not denied that appropriate opportunity to produce/ lead the evidence in support of the defence was granted to the petitioner.

11. An application for production of evidence at a later stage or recall of witness after the examination is closed, cannot be allowed to fill up the lacuna in the case of the prosecution or of the defence. The same also cannot be permitted to the disadvantage of the accused or to cause prejudice to the defence or vice versa.

12. At the same time, additional evidence cannot be allowed to be brought in disguise for re-trial or to change the nature of the case.

13. When the prosecution evidence has been closed long back



and the reasons for non-examination or for not producing the evidence are not satisfactory, any such exercise of power by the learned Trial Court would necessarily cause grave prejudice to the victim.

14. No cogent reason has been provided by the petitioner for not making such application at an earlier stage. The argument that the petitioner only wishes to get the said letters examined as the veracity of the same has been questioned during the cross-examination is unsatisfactory.

15. Moreover, it cannot be said that in the absence of examination of the concerned letters by the handwriting expert, the petitioner would not be able to prove his defence or in the absence of such report, the learned Trial Court will not be able to arrive at a just decision.

16. As noted above by the learned ASJ, the victim was examined way back in January, 2018. It is pointed out that the matter is now fixed for final arguments. The learned ASJ, therefore, rightly did not entertain the application.

17. The Court cannot lose sight of the fact that the trial of the present case relates to serious allegations being made by the victim against the petitioner in relation to the offences under Sections 363/366/342/376(2)(i)/506 of the IPC and Section 6 of the POCSO Act.

18. In a case of such nature, the victim cannot be subjected to the ordeal of a delayed trial at the behest of the accused. Any victim who makes allegations of such nature does not want the trial to be prolonged endlessly on account of such inane and belated requests on behalf of the accused persons.

19. The right of speedy trial is not exclusive to the accused persons but is also available to the victim. Inordinate delay in



conclusion of trial can cause great anguish to the victim of the offence. In many cases, the victim may even suffer more than the accused person due to the delay (***Mangal Singh v. Kishan Singh : (2009) 17 SCC 303***).

20. In view of the above, I find no infirmity in the impugned order. The petition is dismissed.

AMIT MAHAJAN, J

MARCH 11, 2024
“hkaur”/ “SS”