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

+ **CRL.REV.P. 1259/2024 & CrI.M.As.32848-50/2024**

MOHD RIZWAN

.....Petitioner

Through: Mr. Akhilesh Kumar Singh,
Advocate.

versus

STATE NCT OF DELHI THROUGH SHO PS KANJHAWALA

.....Respondent

Through: Mr. Yudhvir Singh Chauhan, APP for
the State with SI Prashant.

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

12.11.2024

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1. The instant revision petition has been filed on behalf of the petitioner under Section 397 of the Code of Criminal Procedure, 1973 (now Section) seeking the following reliefs:

“A. To set aside the impugned order dated: 06-08-2024 passed by Sh. Kapil Kumar ASJ (SPL FTC NORTH- WEST). ROHINI COURT DELHI. IN FIR NO. 211/2013 U/S 354/376 IPC. P.S. KANJHAWALA.

B. To allow the application u/s 311 cr.p.c. to re-cross the prosecutrix.

C. Pass any other or further order as this Hon'ble Court may deem fit and proper.”



2. The learned counsel appearing on behalf of the petitioner submitted that an FIR bearing no. 211/2013 was lodged against the petitioner under Section 354/376 IPC at PS Kanjhawala, Delhi on the allegation that the petitioner had harassed the prosecutrix.

3. It is submitted that the chargesheet has already been filed in the said case and the trial is going on before the learned Court below where the petitioner filed an application under Section 311 of the CrPC for re-cross-examination of the prosecutrix, however, the same was dismissed without appreciation of the settled position of law *vide* order dated 6th August, 2024.

4. It is submitted that the learned Court below erred in not appreciating the fact that the prosecutrix had improved her statement given to the Magistrate and added further details which were missing in the complaint on the basis of which the FIR was lodged initially.

5. It is submitted that the learned Court below erred in holding that the re-examination of the victim/prosecutrix would amount to unnecessary harassment whereas the same is essential for the ends of justice.

6. It is submitted that the learned Court below erred in not appreciating that the police did not investigate the matter properly after improvement in the statement made by the prosecutrix under Section 164 of the CrPC.

7. Therefore, in view of the foregoing submissions, the learned counsel for the petitioner submitted that the instant petition may be allowed.

8. *Per Contra*, the learned APP appearing for the state, on instructions, vehemently opposed the instant petition submitting to the effect that the matter has already reached the advanced stage and directions for re-cross-examination of the prosecutrix would serve no purpose rather would delay the justice.



9. Heard

10. The present petition has been filed to seek directions to the learned Court below for re-cross examination of the prosecutrix due to alleged improvement in her 164 CrPC statement.

11. On earlier occasion, the petitioner had filed an application under Section 311 of the CrPC seeking the same directions, however, the learned Court below dismissed the same by stating as follows:

“The prosecutrix was examined as PW -8 on 26.05.2016 and on that day, the cross examination was deferred.

The victim was cross examined on 27.10.2016 by Ld. Counsel for accused at length.

The victim could not be called again and again in the court for the cross examination as that would amount harassment of the prosecutrix. Further, when the prosecutrix was already cross examined in the year 2016 then after more than 7 years, the present application has been moved which is completely ambiguous. On the aspects on which the cross examined could not be conducted in the year 2016. It is not mentioned in the application as to whether certain new facts came in the notice of the accused after 2016 and thus could not be put to the prosecutrix when she was cross examined. Merely mentioning the application that certain contradiction could not be put to the prosecutrix without mentioning those contradiction in the application or oral mentioned to the court, so that it could be assessed as to whether contradiction are material or not, the present application which is filing on material aspects, cannot be allowed.

At the stage, Ld. Defence counsel submits that he can file on record the relevant contradiction in writing.



To the query of the court, Ld. Defence counsel notable to point out any contradiction, accordingly, again there is no ground to allow the present application.

Hence, the present application stands dismissed.”

12. Upon perusal, it is made out that the learned Court below duly adjudicated the issue on the aspect as raised by the petitioner herein, whereby, it was observed that the petitioner failed to satisfy the Court by stating the reasons for filing such an application after 7 years.

13. It is no dispute that the scope and powers conferred to a Court under Section 311 provides for such remedy to a party, however, the settled position of law also clarifies the limitations in that regard.

14. In **Swapan Kumar Chatterjee v. CBI, (2019) 14 SCC 328**, the Hon’ble Supreme Court reiterated that the powers under Section 311 of the CrPC are required to be exercised cautiously and therefore, a party needs to show strong grounds for such an application.

15. In the instant case, the petitioner herein has failed to satisfy any illegality committed by the learned Court below in dismissing his application for re-cross-examination of the prosecutrix after 7 years of delay.

16. Furthermore, as per the submissions advanced by the learned APP for the State, the trial in the instant matter has already reached at an advanced stage and is only left for the final hearing.

17. Therefore, this Court is of the view that the present petition is nothing but a gross abuse of the process of law and is liable to be dismissed.



18. Accordingly, the instant petition is dismissed, along with pending applications, if any.

CHANDRA DHARI SINGH, J

NOVEMBER 12, 2024

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[Click here to check corrigendum, if any](#)