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

+ **CRL.M.C. 983/2025, CRL.M.A. 4526-4527/2025**

SH. SURENDER SINGH

.....Petitioner

Through: Mr. Prakhyat Sharma, Advocate.

versus

SH. DEVENDER SINGH NEGI & ANR.

.....Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

13.02.2025

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1. The present petition under Section 482 of the Code of Criminal Procedure, 1973¹ read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023², is directed against the judgment dated 24th December, 2024³, passed by the Special Judge (NDPS), District Shahdara, Karkardooma Courts, Delhi whereby the Petitioner's revision petition bearing no. Cr. No. 227/2024 has been dismissed. By the impugned judgment, the Special Judge dismissed the Petitioner's revision petition [Cr. No. 227/2024] and affirmed the Trial Court's order dated 25th September, 2024, whereby the Petitioner's application under Section 311 of CrPC, seeking recall of the complainant for further cross-examination, was declined.

2. The facts and the reasons have been delineated in the impugned order

¹ "CrPC."

² "BNSS"

³ "Impugned order"



as follows:

“11. On the point of delay, it is a matter of record that the complainant was cross-examined on 10.01.2024 and thereafter, the matter was listed on several dates i.e. 14.03.2024, 02.05.2024, 29.05.2024 and 08.07.2024 and the application was finally moved on 05.08.2024, which was also withdrawn on the next date i.e. 14.08.2024 and a fresh application was filed on that day, which was finally decided by the impugned order on 25.09.2024. Thus, as per record, after the witness was cross-examined on 10.01.2024, the matter remained listed for defence evidence for three dates and for final arguments for two dates, after which the application which was disposed of vide impugned order, was filed.

12. The primary reason for the filing of the application at this stage, as per record, seems to be change of counsel, as in the order dated 05.08.2024, it is mentioned that Ld. Counsel for the accused filed fresh vakalatnama. Therefore, as per record, before the change of counsel, no need was felt by the accused / revisionist for further cross-examination of the complainant to elucidate the truth, as is now pleaded in the application.

13. Ld. Counsel for the revisionist on the point of delay has specifically cited judgment titled *P. Sanjeeva Rao Vs. State of AP* (supra) and has strongly relied upon paras-5,7,12,13,14 & 17 of the said judgment.

A perusal of the said judgment reveals that in a criminal case under Prevention of Corruption Act, two witnesses i.e. PW1 & PW2 therein, were not cross-examined, as their cross-examination was recorded as ‘Nil’, as mentioned in para-4 of the cited judgment. The Trial Court, in that case refused to recall the said two witnesses after 3½ years of their examination, which order was finally set-aside by the Hon’ble Apex Court and the opportunity was granted to examine the said witnesses.

In the opinion of this Court, the said judgment in which two material witnesses were not cross-examined at all in a case involving offences under the Prevention of Corruption Act cannot be compared with a case u/s.138 N.I. Act, where the presumption is against the accused, more so, when the signatures on the cheques have duly admitted and further when the witness / complainant has been cross-examined by the previous counsel.

14. In the opinion of the Court, there is considerable delay in filing of the application u/s.311 Cr.P.C. and the only reason for the same seems to be the change of counsel, which in itself will become a never ending process, as even after the cross-examination by another counsel, there will always be some questions left out, which a subsequent counsel, or a counsel even at appellate stage, may feel, should have been asked by the counsel, who was actually examining the witness in the dock.

15. The fact that the accused stated before the Ld. Magistrate that he wanted to lead defence evidence, but thereafter did not lead any defence evidence for three dates and after five dates, filed the application u/s.311 Cr.P.C., shows the delaying tactics being employed by the accused /



revisionist. If the revisionist never intended to lead defence evidence, then he should have said so, at the very first stage before the Ld. Trial Court and should have moved this application at the earliest, rather than at the stage of final arguments. As rightly pointed out by Ld. Counsel for the respondent no.2, the application u/s.311 Cr.P.C. to further cross-examine the complainant / R2 seems to be an attempt to bring back the case to the stage of complainant evidence from the stage of final arguments. The delay in filing the application u/s.311 Cr.P.C. has not been explained either in the application filed before the Ld. Trial Court, or in the present revision petition filed before this Court.

Filling up the lacuna in the prosecution case / incompetency of previous Counsel

16. Perusal of the application u/s.311 Cr.P.C. reveals that in the second and third para of the application, in bold, it is stated that the application was filed primarily due to the incompetency of the previous counsel. The two paras of the application, which are also similar to para B and C of the present revision petition are reproduced as under :

“2. That the respondent is a innocent person and he was always misleded by his previous counsel and due to the lack of duties of previous counsel the respondent is suffering in the present case.

3. That due the lackness of the previous counsel in the cross examination of the complainant/ Respondent No.2 could not came before this Hon'ble Court.”

17. **The question before the Court is : what are the grounds, on which the Court can decide that the previous counsel did not duly cross-examine the witness, when the opportunity was so given, so as to permit subsequent cross-examination of the witness at a later stage?**

On this aspect, it is noted that the impugned order in para-8, the Ld. Trial Court has categorically observed that the perusal of the cross-examination of complainant reveals that the questions intended to be asked to the witness, have already been put-forth to the witness in his cross-examination on 10.01.2024 and that despite the same being answered in negative, no evidence to the contrary was brought by the accused in the form of defence evidence. **It may be noted that the accused was questioned as regards his defence on 19.05.2023, in which he has stated that he had given security cheques qua the amount taken from the complainant / R2 and that he had already paid the entire amount, but the complainant still did not return the cheques and rather, threatened him.** As far as this portion of the defence is concerned, relevant questions were put to the witness / complainant on 10.01.2024, as noted by the Ld. Trial Court. It may be pointed out here itself that at that stage, no defence was taken that amount of Rs.20,000/- was taken by the revisionist from complainant / R2 against which, amount of Rs.2 lakh i.e. ten times the amount, was paid back to the complainant. The said defence for the first



time came up before this Court in para-E on page 5 of the revision petition, which is also reproduced as under:

“E. That in the present matter Accused had borrowed just Rs. 20,000/- from the Respondent No.2/ Complainant in the month of December 2019 and against the said loan the Respondent No.2/ Complainant had recovered almost Rs. 2,00,000/- from the accused/petitioner in the name of principal, Interest and penalties. That despite recovery of hues amount from the Accused/ petitioner, the Respondent No.2/Complainant did not returned the blank surety cheques which were in signed condition with some blank documents in signed conditions to the accused/petitioner and by virtue of misusing the said surety cheque, the Respondent No.2/Complainant had filed the present complaint case just to harass the accused/petitioner and to get the unlawful gain and there is still possibility, that the Respondent No.2/ Complainant can misused those documents also to harass the accused/petitioner and get the unlawful gain.”

18. *The said defence was never taken either at the stage of disclosure of defence, when the notice u/s.251 Cr.P.C. was framed, or even subsequently, when application u/s.311 Cr.P.C. dated 06.08.2024 was filed. The said defence, which is taken in the revision petition, is also not in line with the defence taken by the accused before the Ld. Trial Court on 19.05.2023, when he stated “I had already paid the entire amount”. At that stage, the accused did not mention that he had paid ten times the amount to the complainant / R2, which is a material fact, which should have been disclosed at the very first stage. Further, once, having admitted that some payments have been received, whatever amount it may be, the onus shifts on the party, who has received the payment to prove that the repayment of the same was also made, but in order to discharge that onus, the accused never stepped into the witness box, despite being given three dates for the said purpose. Even, as on date, it is not the case of the accused that he wants to appear in the witness box and depose regarding his defence and face cross-examination on that point, rather, what he is seeking by way of present revision petition, is to ask the complainant to once again face the cross-examination to prove a defence, which was never disclosed before the Trial Court at any stage.*

19. *Coming to the judgment, which has been cited by the Ld. Counsel for the revisionist on the point that an application u/s.311 Cr.P.C. cannot be dismissed merely on the ground that it would lead to filling the lacuna of the prosecution's case, it is found that in the judgment titled Varsha Garg (supra), the question before the Court was with respect to production and proving of some documents, which could not be proved earlier. The Ld. Counsel relied upon para-40 of the said judgment, wherein it was observed that no party in a trial can be foreclosed from correcting errors and that if proper evidence was not adduced or relevant material was not brought on*



record due to any inadvertence, the Court should be magnanimous in rectifying such mistakes. The said paragraph is reproduced as under:

“40 The right of the accused to a fair trial is constitutionally protected under Article 21. However, in Mina Lalita Baruwa (supra), while reiterating Rajendra Prasad (supra), the Court observed that it is the duty of the criminal court to allow the prosecution to correct an error in interest of justice. In Rajendra Prasad (supra), the Court had held that:

“8. Lacuna in the prosecution must be understood as the inherent weakness or a latent wedge in the matrix of the CRL.M.C.-983/2025 32 DLSH010068412024 CR No.227/24 Surender Singh Vs.State of NCT of Delhi & Anr. PS : Jyoti Nagar Page 15 of 17 prosecution case. The advantage of it should normally go to the accused in the trial of the case, but an oversight in the management of the prosecution cannot be treated as irreparable lacuna. No party in a trial can be foreclosed from correcting errors, If proper evidence was not adduced or a relevant material was not brought on record due to any inadvertence, the court should be magnanimous in permitting such mistakes to be rectified. After all, function of the criminal court is administration of criminal justice and not to count errors committed by the parties or to find out and declare who among the parties performed better.” (emphasis supplied)

In the present case, the importance of the decoding registers was raised in the examination of PW-41. Accordingly, the decoding registers merely being additional documents required to be able to appreciate the existing evidence in form of the call details which are already on record but use codes to signify the location of accused, a crucial detail, which can be decoded only through the decoding registers, the right of the accused to a fair trial is not prejudiced. The production of the decoding registers fits into the requirement of being relevant material which was not brought on record due to inadvertence.”

20. *It may be noted that in the said case, an application u/s.311 Cr.P.C. was filed before the closure of the prosecution evidence as observed in para-41 and, therefore, in that case, which was a case u/s.302/34 IPC, the Court permitted summoning of certain records i.e. the decoding register, which could not be produced by the prosecution during Prosecution Evidence.*

21. *The facts of the present case are completely on different footing, as in the present case, the accused is not seeking summoning of any record, like in the case cited above, rather, what he is seeking is further cross-examination of complainant after the complainant has already been cross-examined by his previous counsel, because now he has engaged a*



new counsel.

Accused did not mention the questions, which were left to be put to the complainant / R2, when the said witness was cross-examined

22. As far as the said argument is concerned, on this aspect, the Ld. Counsel for revisionist relied upon the judgment titled *Amarjeet @ Kaluwa Vs. State of UP (supra)*, wherein it is mentioned that there is no requirement under the law to file questionnaire alongwith the application for recalling the witness.

As far as the said observation in the impugned order is concerned, the Court is of the opinion that the questionnaire is not required to be made part of the application u/s.311 Cr.P.C. however, as noted earlier, the application u/s.311 Cr.P.C. has not been dismissed merely on that ground. Though, the questionnaire to be put to the witness is not required to be annexed with the application u/s.311 Cr.P.C., but the reasons to recall a witness who has already been cross-examined, do need to be mentioned in the application and by merely stating that the previous counsel was incompetent by itself does not form a ground to further cross-examine a witness.

23. It was pointed out by Ld. Counsel during arguments that even if debt is admitted, still a case u/s.138 N.I. Act can culminate into conviction, only if the debt is a legally enforceable debt and not otherwise. **The said submission made by Ld. Counsel is legally correct and it is true that only a legally enforceable debt can be the basis of a case u/s.138 N.I. Act, but the defence that complainant was running illegal business of money lending, was specifically put to the complainant in his cross-examination, when he stated “I am not in the business of money lending and the advancement to the accused was the first advancement ever made by me”. Thus, this defence was taken during the cross examination of CW1 / complainant on 10.01.2024 and the question whether more questions could have been put on this aspect or not, would always remain open, as and when a new counsel is engaged by the accused.**

Final observation

24. In view of the aforesaid discussion, in the opinion of the Court, the Ld. Trial Court rightly dismissed the application u/s.311 Cr.P.C. filed by the accused / revisionist, seeking a re-cross-examination of the complainant, after the complainant was already cross-examined by the counsel for revisionist on 10.01.2024. The present revision petition is accordingly dismissed.

25. Revision file be consigned to Record Room.

26. TCR, if any, be sent back alongwith copy of this judgment.”

[Emphasis added]

3. Aggrieved by the impugned order, the Petitioner has invoked the



inherent jurisdiction of this Court under Section 482 of the CrPC read with Section 52 of the BNSS, seeking its quashing. Counsel for the Petitioner advances the following contentions:

3.1. The scope of Section 311 of CrPC is broad and grants the Court the discretion to summon, recall, or re-examine any witness if doing so is essential for the just decision of the case. However, both the Trial Court and the Revisional Court have failed to exercise this discretion judiciously, thereby depriving him of a crucial opportunity to test the veracity of the complainant's allegations.

3.2. The previous counsel did not conduct a thorough cross-examination of the complainant, leaving out material questions that could have effectively challenged the claim of a legally enforceable debt. The lapses on the part of counsel should not prejudice the Petitioner, particularly in a case where the burden shifts onto the accused under Section 139 of the Negotiable Instruments Act, 1881⁴.

3.3. The Petitioner, being a layperson, was unaware of these omissions at the time. It was only after engaging new counsel and reviewing the case record that he realized the inadequacy of the previous cross-examination. Consequently, he promptly filed the application under Section 311 of CrPC. The delay in moving the application was not deliberate but arose from a genuine oversight.

3.4. The Petitioner must be afforded an opportunity to establish that the cheque in question does not represent a legally recoverable debt. The best way to do so is by confronting the complainant with questions that were previously omitted, which are crucial to rebutting the presumption under



Section 139 of the NI Act. The denial of this opportunity would result in a failure of justice.

3.5. The complainant has filed multiple cases under Section 138 of the NI Act against various individuals, suggesting that he is engaged in an illegal money-lending business. Further cross-examination would allow the Petitioner to expose this pattern of conduct and demonstrate that the present complaint is an abuse of legal process aimed at extorting money. This aspect was not adequately brought out during the initial cross-examination.

4. The Court has considered the aforementioned contentions but remains unpersuaded. At the outset, it must be noted that the impugned order was passed in the exercise of revisional jurisdiction under Section 397 of CrPC. The present petition under Section 482 of CrPC, therefore, effectively seeks a revision of a revisional order. The scope of scrutiny under Section 482 of CrPC against such an order is inherently limited and is confined to instances where the impugned decision reflects manifest perversity, gross irregularity, or results in a miscarriage of justice. Unless such exceptional circumstances exist, interference by this Court would not be warranted.

5. The Revisional Court has correctly noted that after the cross-examination of the complainant by the erstwhile counsel, the Petitioner's statement was recorded under Section 313 of CrPC. In this statement, the Petitioner admitted that the cheques in question were given to the complainant as security at the time of taking a loan. Further, he also categorically stated that he intended to lead defence evidence. Accordingly, the Trial Court granted him multiple opportunities to do so—on 14th March, 2024, 2nd May, 2024, and 29th May, 2024. However, despite such repeated

⁴ "NI Act"



opportunities, no defence evidence was led, leading to the closure of defence evidence and the listing of the matter for final arguments on 8th July, 2024, and thereafter on 5th August, 2024. It was only at this belated stage, when the matter was ripe for final arguments, that the Petitioner engaged a new counsel and filed an application under Section 311 of CrPC seeking to recall the complainant for further cross-examination. The timing of this application itself raises serious doubts as to whether the intent was to secure justice or merely to delay the conclusion of the trial.

6. The Petitioner's primary argument is that crucial questions were left out in the earlier cross-examination, particularly regarding the alleged money lending activities of the complainant. However, a perusal of the trial record reveals that these questions were, in fact, put to the complainant during the initial cross-examination, wherein he explicitly denied them, stating: *"I am not in the business of money lending, and the advancement to the accused was the first advancement ever made by me."* If, according to the Petitioner, this statement was incorrect, the appropriate recourse was not to seek further cross-examination but to lead defence evidence to establish the contrary. The Petitioner had ample opportunity to do so but failed to avail the same. The attempt to re-open cross-examination at this stage appears to be an effort to fill gaps in the defence rather than a legitimate exercise of his rights under Section 311 of CrPC.

7. The Court must also emphasise that a trial cannot be an unending process, subject to re-litigation at the instance of every new legal representative engaged by an accused. Permitting such a course would set a dangerous precedent where litigants could indefinitely prolong trials by frequently changing counsel and seeking to recall witnesses on the ground



that a different line of questioning should have been pursued earlier. Judicial proceedings require finality, and mere dissatisfaction with the conduct of the previous counsel cannot, by itself, justify further cross-examination.

8. In light of the foregoing, the Court finds no merit in the present petition. The Petitioner was afforded sufficient opportunity to cross-examine the complainant and lead defence evidence. The present attempt to re-open cross-examination, after multiple opportunities were squandered, is neither *bona fide* nor warranted.

9. Accordingly, the petition is dismissed along with any pending applications.

SANJEEV NARULA, J

FEBRUARY 13, 2025

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