



2025:DHC:1248



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

Date of decision: 17.02.2025

+ CRL.M.C. 1088/2025 & CRL.M.A. 4992/2025 CRL.M.A. 4993/2025
RAJVEER SHARMAPetitioner

Through: Mr. Niraj Kumar Jha, Adv.

versus

DEVENDER CHAUDHARYRespondent

Through: None

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

ORDER

MANMEET PRITAM SINGH ARORA, J (ORAL):

1. This petition has been filed under Section 528 of the Bharatiya
Nagarik Suraksha Sanhita (BNSS), 2023.

“i) Set aside the **order dated 14.01.2025** arising out of Criminal
Revision Petition No. 35 OF 2025 before Sh. Dr. Tarun Sahrawat,
ASJ + Spl. Judge (NDPS), South East District, Saket Court, New
Delhi; and/or

ii) Set aside the **order dated 21.10.2024** and Allow the Petitioner 's
application for recalling the respondent for cross-examination in CT
Case No. 637640/2016 before the Court of Sh. Abhitesh Kumar, Ld.
JMFC (NI ACT) – 01, SOUTH EAST, SAKET COURT;”

(Emphasis Supplied)

2. Learned counsel for the Petitioner states that it is a matter of record
that the Petitioner herein (accused) was granted an opportunity to cross-
examine the complainant on 07.03.2022 and the matter was fixed for the
said purpose on 25.05.2022.

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3. He further admits that when the matter was put up for hearing on 25.05.2022, the Trial Court has correctly recorded that there was none present to cross-examine the Complainant and, therefore, right of accused to cross-examine the Complainant was closed.

4. He states that he is unable to explain under what circumstances the application under Section 311 of the Code of Criminal Procedure (Cr.P.C) seeking to recall the said order i.e. 25.05.2022 was filed before the Trial Courts on 21.10.2024, to be precise after 2 ½ years and as a result the said application was dismissed vide impugned dated 21.10.2024 by the Trial Court.

5. He, states, the said order i.e. 21.10.2024 passed by the Trial Court was challenged before the learned ASJ-04, South-East District, Saket Court, New Delhi in Cr. Rev. 35/2025 titled as “Rajveer Sharma Vs. Devender Chaudhary” [‘Revision Court’] and vide impugned order dated 14.01.2025 the same was dismissed and the Trial Court order dated 21.10.2024 was upheld on the ground that no medical records of the Petitioner has been provided which could prove the fact that he was advised bed rest and moreover, due to the sole fact that Petitioner was suffering from various ailments cannot be a sufficient ground to recall the impugned dated 21.10.2024 wherein Petitioner’s right to cross-examine the complaint was closed.

6. He states, however, it is a matter of record that the Petitioner herein is a patient suffering from hypertension, chronic bronchitis and asthmatic bronchitis. He states that this fact was duly recorded by the Trial Court on 02.05.2022 in a separate Complaint Case 11835/2019 titled as “Arun Shukla Vs. Rajveer Sharma”. He states that the Petitioner is aggrieved that the Trial



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Court vide order dated 21.10.2024, after dismissing the application filed under Section 311 Cr.P.C. for recall, has right away placed the matter for final arguments without recording the Petitioner's statement under Section 313 of Cr.P.C.

7. He states the matter is coming up before the Trial Court for hearing on 09.04.2025 and it is correct that the Petitioner herein has not filed any application before the Trial Court for having his statement recorded under Section 313 of Cr.P.C.

8. He states that the medical ill health of the Petitioner is a sufficient ground for allowing the application under Section 313 Cr.P.C and both the Trial Court and the Revisional Court has failed to consider this aspect.

9. This Court has considered the submission of counsel for the Petitioner and perused the record.

10. The Trial Courts order dated 07.03.2022 and 25.05.2022 read as under:

“CT CASES 637640/2016

DEVENDER CHAUDHARY Vs. RAJVEER SHARMA

07.03.2022

Present: Sh. Rajesh Bagga, Ld. Counsel for complainant with complainant.
Sh. Varun Singh, Ld. Counsel for accused.

The counsel for accused seeks time to prepare for the purpose of cross examination of the complainant.

Last and final opportunity is given to the accused to cross examine the complainant subject to cost of Rs.3000/- to be paid to the complainant on the next date of hearing.

Put up for purpose fixed on 25.05.2022.

Bhanu Pratap Singh
MM (N.I. ACT)/South-East, Saket
New Delhi/07.03.2022”

(Emphasis Supplied)

CT CASES 637640/2016



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DEVENDER CHAUDHARY Vs. RAJVEER SHARMA

25.05.2022

Present: Sh. Rajesh Bagga, Ld. Counsel for complainant with complainant.

Perusal of the record reveals that last and final opportunity was given to the accused to cross examine the complainant vide order dated 07.03.2022 of this court. However, **none has appeared on behalf of accused today for the purpose of cross examination of the complainant.**

Considering that the case is more than 05 years old, this court is not inclined to grant any further opportunity to the accused to cross examine the complainant. Therefore, the right of the accused to cross examine the complainant stands closed.

Put up for statement of accused on 24.09.2022.

Bhanu Pratap Singh
MM (N.I. ACT)/South-East, Saket
New Delhi/25.05.2022”
(Emphasis Supplied)

11. Learned counsel for the Petitioner does not dispute the correctness of the proceedings recorded therein. In these facts, the closure of the Petitioner’s right to cross-examine the Complainant as directed vide order dated 25.05.2022 suffers from no infirmity and has attained finality. The Petitioner has been unable to give any reasonable ground for not approaching the Trial Court immediately after 25.05.2022 until 21.10.2024 for grant of an opportunity to cross-examine the Complainant. The delay of 2 ½ years is substantial and has not been explained by the Petitioner.

12. In these facts observations returned by the Trial Court vide order dated 21.10.2024 to the effect that the Petitioner is seeking to delay the trial appears to be correct on the record.

13. Moreover, the submission of the counsel for the Petitioner that the accused is suffering from chronic bronchitis would not justify the unavailability of the Petitioner’s counsel to complete the cross-examination of the Complainant. The fact that Petitioner herein has been attending the

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complaint proceedings through video conferencing link is apparent from the order dated 21.10.2024 and therefore there is no justification for not completing the cross-examination.

14. The ground of illness as already noted by the Trial Court and the Revision Court is unsubstantiated. Moreover, the same would not justify delaying the trial for three years by failing to cross-examine the Complainant.

15. In the aforesaid facts the petition is without any merit and is accordingly dismissed.

MANMEET PRITAM SINGH ARORA, J

FEBRUARY 17, 2025/hp/am/ms

Click here to check corrigendum, if any

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