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

+ **CRL.M.C. 1237/2025**

SAKIR ALI

.....Petitioner

Through: Mr. R.H. A. Sikander, Mr. Jatin Bhatt, Mr. Jamil Ahmed Khan, Mr. Kshitij Singh and Mr. Sikander, Advocates

versus

STATE GOVT. OF NCT OF DELHI

.....Respondent

Through: Mr. Madhukar Pandey, SPP with Mr. Daksh Sachdeva, Advocate for the State along with SI Suresh Kumar and ASI Naushad Haider

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

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27.02.2025

CRL.M.A. 5546/2025 (Exemption)

1. Exemption allowed subject to just exceptions.
2. The application stands disposed of.

CRL.M.C. 1237/2025 & CRL.M.A. 5547/2025 (Stay)

3. The instant petition under Article 227 of the Constitution of India read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter "BNSS") [earlier under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter "Code")] has been filed on behalf of the petitioner seeking the following reliefs:



*“a) Allow the present petition and set aside order dated 10.12.2024 passed in Sessions Case No.283 of 2021 by the Ld. Additional Sessions Judge – 03, North-East Delhi District, whereby the cross examination of PW-13 SI Ravi Punia, the part Investigating Officer of the Case, has been closed; and
b) Direct the Ld. Trial Court to recall PW-13 SI Ravi Punia, part Investigating Officer of the Case, and to permit the Petitioner to put the necessary question(s) to him as to whether or not the said witness wishes to refresh his memory by perusing his case diary; and
c) Pass any other order or direction which this court may deem appropriate and necessary.”*

4. The brief facts of the case are that the FIR bearing no. 136/2020 was registered at Police Station – New Usmanpur, Delhi for offences punishable under Sections 147/148/149/308 of the Indian Penal Code, 1860 (hereinafter “IPC”) as the complainant alleged that stone pelting occurred from the house of one Mr. Sabir, resulting in the complainant being struck by a brick. Accordingly, supplementary chargesheet was filed on 21st December, 2024 and charges were framed against the petitioner under Sections 143/147/148/149/308 of the IPC.

5. Thereafter, the learned Additional Sessions Judge-03, Karkardooma Courts, Delhi (hereinafter “Court concerned”) closed the cross-examination of PW-13 i.e., Investigating Officer herein (hereinafter “IO”) vide order dated 10th December, 2024 (hereinafter “impugned order”).

6. Aggrieved by the same, the petitioner filed the instant petition seeking setting aside of the impugned order.

7. Learned counsel appearing on behalf of the petitioner submitted that the instant petition is filed challenging the impugned order, wherein the Court concerned disallowed certain questions posed by the petitioner to the



IO during his cross-examination on the pretext that the same is violative of Section 172 of the Code.

8. It is submitted that the Court concerned failed to appreciate that the petitioner has merely asked the IO in his cross-examination that whether he wanted to refresh his memory by checking his case diary during the cross-examination, which is not in derogation of Section 172 of the Code. In light of the same, the petitioner has referred to certain questions i.e., Question Nos. 3,7,9 and 10 of the cross-examination of IO, which is annexed as Annexure P-6 to the instant petition.

9. It is submitted that the Court concerned has erred in appreciating Section 172 of the Code, wherein it does not disallow queries pertaining to the contents of the case diary, but merely prohibits the accused and its agents to call for the same or peruse its contents. It is submitted that the petitioner did not seek to peruse the contents of the case diary, but simply asked the IO whether he wishes to peruse the case diary to refresh his memory.

10. In light of the foregoing submissions, it is submitted that the instant petition may be allowed.

11. *Per Contra*, learned APP appearing on behalf of the State vehemently opposed the instant petition and submitted that the questions posed by the petitioner to the IO during his cross-examination were only with the intent to ascertain the contents of the case diary, which is contrary to Section 172 of the Code.

12. It is submitted that the Court concerned has rightly disallowed all the questions of the petitioner at the stage of cross-examination of the IO. Moreover, the IO had already answered all the questions of the petitioner's



counsel which were permissible under law. Therefore, while passing the impugned order, the Court concerned has rightly closed the cross examination of the IO i.e., PW-13.

13. In view of the above facts and submissions, the instant petition is nothing but gross misuse of process of law and there are no illegality or error in the impugned order passed by the Court concerned dated 10th December, 2024, therefore, the instant petition may be dismissed being devoid by any merit.

14. Heard learned counsel for the parties and perused the record, including the contents of the petition, impugned order and cross-examination of the IO, which is annexed as Annexure P-6 to the instant petition.

15. For the sake of convenience, it is apposite to examine the relevant provision i.e., Section 172 of the Code, which reads as follows –

“172. Diary of proceedings in investigation.—

(1) Every police officer making an investigation under this Chapter shall day by day enter his proceedings in the investigation in a diary, setting forth the time at which the information reached him, the time at which he began and closed his investigation, the place or places visited by him, and a statement of the circumstances ascertained through his investigation.

[(1A) The statements of witnesses recorded during the course of investigation under section 161 shall be inserted in the case diary.

(1B) The diary referred to in sub-section (1) shall be a volume and duly paginated.]

(2) Any Criminal Court may send for the police diaries of a case under inquiry or trial in such Court, and may use such diaries, not as evidence in the case, but to aid it in such inquiry or trial.



(3) Neither the accused nor his agents shall be entitled to call for such diaries, nor shall he or they be entitled to see them merely because they are referred to by the Court; but, if they are used by the police officer who made them to refresh his memory, or if the Court uses them for the purpose of contradicting such police officer, the provisions of section 161 or section 145, as the case may be, of the Indian Evidence Act, 1872 (1 of 1872), shall apply.”

16. Upon bare reading of the foregoing provision, it is trite law that the accused or its agents cannot call for the case diaries or entitled to peruse the contents thereof, however, if the concerned IO refers to the entries made in the case diary to refresh his memory, then Section 145 and 161 of the Indian Evidence Act, 1872 become applicable. At this juncture, it is pertinent to mention the case of ***Balakram v. State of Uttarakhand***, (2017) 7 SCC 668, wherein the following is observed –

“10. Coming to the use of police diary by the accused, sub-section (3) of Section 172 clearly lays down that neither the accused nor his agents shall be entitled to call for such diaries nor he or they may be entitled to see them merely because they are referred to by the Court. But, in case the police officer uses the entries in the diaries to refresh his memory or if the Court uses them for the purpose of contradicting such police officer, then the provisions of Sections 145 and 161, as the case may be, of the Evidence Act would apply. Section 145 of the Evidence Act provides for cross-examination of a witness as to the previous statements made by him in writing or reduced into writing and if it was intended to contradict him in writing, his attention must be called to those portions which are to be used for the purpose of contradiction. Section 161 deals with the adverse party's right as to the writing used to refresh memory. It can, therefore, be seen that, the right of the accused to cross-examine the police officer with reference to the entries in the police diary is very much limited in extent and even that limited scope arises only when the Court uses the entries to contradict



the police officer or when the police officer uses it for refreshing his memory.”

17. Coming to the instant case, the perusal of Annexure P-6, wherein cross-examination of IO is recorded, reveals that the petitioner’s counsel has repeatedly asked questions pertaining to the details of the case diary, thereby intending to know the contents of the same, which is contrary to the provision of Section 172 of the Code. It further reveals that the IO has not sought to examine the contents of the case diary to refresh his memory, however, it is the petitioner’s counsel who has repeatedly asked questions pertaining to the contents of the case diary, with an intention to lead the IO to peruse the contents thereof, thereby attaining requisite information against the accused, which is opposed by Section 172 of the Code.

18. Moreover, despite the Court concerned repeatedly emphasizing after every question posed by the petitioner’s counsel to the IO that such questions were impermissible under Section 172 of the Code, , the petitioner’s counsel continued with similar questions, thereby leading to the closure of the cross-examination of the IO.

19. Therefore, this Court is of the considered view that the questions posed by the petitioner’s counsel at the stage of cross-examination of the IO were with an intent to ascertain the contents of the case diary. Therefore, the Court concerned has rightly rejected certain questions posed by the petitioner’s counsel to the IO as the same were contrary to Section 172 of the Code.

20. Taking into consideration the foregoing discussions, this Court is of the view that the instant case is not a fit case to exercise its powers under



Article 227 of the Constitution of India or Section 528 of the BNSS (Section 482 of the Code) and in view of the same, this Court does not find any merit in allowing the instant petition.

21. Therefore, this Court is of the considered view that there is no illegality in the impugned order dated 10th December, 2024 passed by the learned Additional Sessions Judge-03, Karkardooma Courts, Delhi in SC No. 283/2021 arising out of FIR bearing no. 136/2020 registered at Police Station – Usmanpur, New Delhi, and the same is, hereby, upheld.

22. Accordingly, the instant petition is dismissed alongwith pending applications, if any.

CHANDRA DHARI SINGH, J

FEBRUARY 27, 2025

Rk/mk/kj

Click here to check corrigendum, if any