



2025:DHC:1772



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

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Date of Decision: 17.03.2025

+ CRL.M.C. 1775/2025, CRL.M.A. 7991/2025

SH NARENDRA KUMAR VASHISHTHAPetitioner

Through: Mr. Gaurav Dalal, Adv.

versus

THE STATE GOVT NCT OF DELHIRespondent

Through: Ms. Kiran Bairwa, APP with SI
Anuradha tyagi and SI
Vandana, PS Madhu Vihar.

CORAM:

HON'BLE MS. JUSTICE SHALINDER KAUR

SHALINDER KAUR, J. (ORAL)

1. This petition has been filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 to assail the Order dated 16.11.2024 passed by the learned Additional Sessions Judge (SC-RC), East District, Karkardooma Courts, Delhi ("Trial Court") whereby the application moved by the Prosecutrix under Section 311 of the Code of Criminal Procedure, 1973 ("CrPC") for the cross-examination of the Petitioner, who had appeared as DW-1 before the learned Trial Court, has been allowed.

2. Mr. Gaurav Dalal, learned counsel for the Petitioner submits that the Petitioner was falsely implicated in the FIR No. 1549/2014 dated 26.12.2014, registered at Police Station Madhu Vihar for the



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offences under Sections 376 & 506 of the Indian Penal Code, 1860. He submits that after filing of the Chargesheet, the Prosecutrix on 19.03.2024 filed an application under Section 311 of the CrPC seeking cross-examination of the Petitioner, which was *vide* Impugned Order wrongly allowed by the learned Trial Court.

3. Learned counsel for the Petitioner challenges the Impugned Order on two grounds, one, that in the said application of the Prosecutrix, no valid reason for further cross-examination of the Petitioner was provided. Second, that allowing of the application, after closing of Defence Evidence, would cause delay in the trial.

4. He submits that the Petitioner has been extensively cross-examined by the learned Additional Public Prosecutor for the State before the learned Trial Court and no further cross-examination of the witness is required, which has already been concluded.

5. Having heard the arguments and perused the record, this Court may note that enormous power is vested in the Court under Section 311 of the CrPC (*Analogous provision now under Section 348 of the Bharatiya Nagarik Suraksha Sanhita, 2023*), which ensures to fulfil the purpose of getting to the truth in a criminal trial. Moreso, the Court is not only empowered to re-call or re-examine the witness but can also call new witness at any stage, if required. The relevant provision is quoted herein under:-

“311. Power to summon material witness, or examine person present.—Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or



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recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.”

6. The objective under Section 311 of the CrPC has also been noted by the Supreme Court in its decision in ***Zahira Habibullah Sheikh vs State of Gujarat*** (2006) 3 SCC 374 as under:

“27. The object underlying Section 311 of the Code is that there may not be failure of justice on account of mistake of either party in bringing the valuable evidence on record or leaving ambiguity in the statements of the witnesses examined from either side. The determinative factor is whether it is essential to the just decision of the case. The section is not limited only for the benefit of the accused, and it will not be an improper exercise of the powers of the court to summon a witness under the section merely because the evidence supports the case of the prosecution and not that of the accused. The section is a general section which applies to all proceedings, enquiries and trials under the Code and empowers the Magistrate to issue summons to any witness at any stage of such proceedings, trial or enquiry. In Section 311 the significant expression that occurs is “at any stage of any inquiry or trial or other proceeding under this Code”. It is, however, to be borne in mind that whereas the section confers a very wide power on the court on summoning witnesses, the discretion conferred is to be exercised judiciously, as the wider the power the greater is the necessity for application of judicial mind.”

7. Pertinently, the Supreme Court in ***Harendra Rai vs State of Bihar*** (2023) SCC OnLine SC 1023, noted that Section 311 of CrPC should be invoked when it is essential for the just decision of the case at hand.

8. It would also be apposite to recapitulate that the position of law is well settled that the complainant/victim has right to participate in



the adjudicatory process. The recent amendment to the CrPC recognises this right of a victim in criminal jurisprudence along with the stay. The Supreme Court in ***Jagjeet Singh & Ors. Vs Ashish Mishra @ Monu & Anr.*** (2022) 9 SCC 321 has noted this proposition. Relevant extract thereof are as under:

“22. It cannot be gainsaid that the rights of a victim under the amended CrPC are substantive, enforceable, and are another facet of human rights. The victim's right, therefore, cannot be termed or construed restrictively like a brutum fulmen [Ed. : The literal translation from the Latin approximates to “meaningless thunderbolt or lightning”, and is used to convey the idea of an “empty threat” or something which is ineffective.] . We reiterate that these rights are totally independent, incomparable, and are not accessory or auxiliary to those of the State under the CrPC. The presence of “State” in the proceedings, therefore, does not tantamount to according a hearing to a “victim” of the crime.

23. A “victim” within the meaning of CrPC cannot be asked to await the commencement of trial for asserting his/her right to participate in the proceedings. He/She has a legally vested right to be heard at every step post the occurrence of an offence. Such a “victim” has unbridled participatory rights from the stage of investigation till the culmination of the proceedings in an appeal or revision. We may hasten to clarify that “victim” and “complainant/informant” are two distinct connotations in criminal jurisprudence. It is not always necessary that the complainant/informant is also a “victim”, for even a stranger to the act of crime can be an “informant”, and similarly, a “victim” need not be the complainant or informant of a felony.”

9. Undoubtedly, the cross-examination of the witness to be recalled must relate to the relevant fact and may also not be confined to the facts to which the witness has testified while recording the examination in chief.



10. Perusal of the Impugned Order shows that the learned Trial Court has considered submissions raised on behalf of the Petitioner before the Court and has passed a reasoned Order. The relevant extracts of the Impugned Order are as under:-

“8. It is pellucid that the accused is facing the charge u/s 420 IPC also and the prosecutrix is justified in asking the relevant questions regarding the civil suit pending between the parties and the source of funds of the accused.

... ..

11. Ld. Addl.P.P for the State has endorsed the contents of the present application in his arguments and has further made a written endorsement in today's order sheet that this application can be considered to have been filed on behalf of the State itself because he also is in consonance with the contents of the present application.

12. Hence after having perused the record, this court deems it fit to allow the present application because the victim of sexual assault is a primary stakeholder and she should be given a full opportunity to put forth the relevant questions regarding the civil proceedings and the financial capacity of the accused, to him in his cross examination. I see no reason to deny the prosecutrix of this opportunity. Hence, keeping in view of the interest of justice and fairness in the trial, present application filed u/s 311 Cr.P.C to recall the accused/DW-1 for his cross examination stands allowed subject to payment of cost of Rs. 5000/- to be paid to the accused by the applicant on the next date of hearing.”

11. The learned counsel for the Petitioner has failed to point out any irregularity in the Impugned Order, which does not warrant any interference by this Court.

12. To consider the concern of the learned Counsel for the petitioner that summoning of petitioner as DW-1 would delay the trial, it is made clear that the cross-examination shall be conducted on the same day i.e. 29.04.2024, the date already fixed when the witness



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shall appear before the learned Trial Court. Other than the said date of hearing, no further opportunity shall be granted for cross-examination of the Petitioner/DW-1.

13. With the above observations, the petition, along with the pending application, stands disposed of.

SHALINDER KAUR, J

MARCH 17, 2025/ss/km

Click here to check corrigendum, if any