



\$~79

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

+ **CRL.M.C. 2069/2025**

SHRI BACHAN LAL BAJAJ

.....Petitioner

Through: Mr. Anurag Kalra, Mr. Siddhartha
Verma, Advocates.

versus

STATE NCT OF DELHI & ANR.

.....Respondents

Through: Mr. Hitesh Wali, APP

CORAM:

HON'BLE MR. JUSTICE RAVINDER DUDEJA

ORDER

27.03.2025

%

CRL.M.A. 9254/2025 (exemption)

Allowed, subject to all just exceptions.

This application stands disposed of.

CRL.M.C. 2069/2025 & CRL.M.A. 9255/2025 (stay)

1. This is a petition under Section 528 BNSS, 2023, seeking directions to set aside the order dated 28.01.2025, passed by the learned JMFC-04, NI Act in Case No. 5802/2018, titled as, “Balwant Singh vs. Bachan Lal Bajaj”.
2. Respondent No. 2 filed a complaint under Section 138 NI Act, titled, “Balwant Singh vs. Bachan Lal Bajaj” in Case No. 5802/2018. Notice under Section 251 Cr.P.C. was served upon the petitioner on 20.11.2020.
3. On 03.02.2023, respondent No. 2-Balwant Singh was examined and discharged.



4. The record reveals that the petitioner engaged a new counsel who filed an application under Section 311 Cr.P.C. on 16.05.2024 for recall of CW-1-Balwant Singh for further cross examination. The said application came to be dismissed by the learned trial Court by order dated 28.01.2025.

5. Learned counsel for petitioner submits that during cross-examination of CW-1, questions regarding his financial capacity to advance loan to the petitioner were not asked. The Income Tax Returns of CW-1 were not demanded during cross-examination to ascertain the financial capacity of CW-1 to advance loan to the petitioner. In view of the absence of such questions being put to CW-1, the petitioner would suffer material prejudice. He further submits that Section 311 Cr.P.C. empowers the Court to recall the witnesses for the purpose of cross-examination at any stage, if their evidence appears to be essential for the just decision of the case.

6. There is no dispute with regard to the power of the Court to recall any witness for purpose of further examination/cross-examination, if such evidence appears to be essential. However, such power is to be exercised judicially depending upon the facts and circumstances of a particular case. The relevant paragraphs of the impugned order reads as under:-

“ It is a well settled law that a witness cannot be recalled u/s 311 CrPC merely because of incompetence or change of counsel. Reliance in this regard can be placed on the judgment of Hon’ble Supreme Court of India in “*NCT of Delhi vs. Shiv Kumar Yadav*”. (2016) 2 SCC 402.

Perusal of record reveals that CW-1 Balwant Singh was examined-in-chief and cross-examined on 03.02.2023. Further, the questions pertaining to loan have already been put to CW-1. The mere statement that questions relating to financial capacity have to be put to the witness, is not sufficient to recall the witness. It must be specifically stated in the application as to on what grounds/facts, the witness needs to be recalled.

In “*Anurag Srivastava Vs. State of UP*” (2010) (71) ACC 504, it was held when application u/s 311 CrPC was moved by the accused that the witness has to be cross-examined on some important points but the



important points being not mentioned in the application, such application cannot be allowed.”

7. The Hon’ble Supreme Court in the case of **NCT of Delhi vs. Shiv Kumar Yadav** (2016) 2 SCC 402, while dealing with the issue as to whether the application under Section 311 Cr.P.C. be allowed on the plea that defence counsel was not competent and has not effectively cross-examined the witness, has summarized the reasons in paragraph 29 of the judgment, which reads as follows:-

- i. The trial Court and the High Court held that the accused had appointed counsel of his choice. He was facing trial in other cases also. The earlier counsel were given due opportunity and had duly conducted cross-examination. They were under no handicap;
- ii. No finding could be recorded that the counsel appointed by the accused were incompetent particularly at the back of such counsel;
- iii. Expeditious trial in a heinous offence as is alleged in the present case is in the interests of justice;
- iv. The trial court as well as the High Court rejected the reasons for recall of the witnesses;
- v. The Court has to keep in mind not only the need for giving fair opportunity to the accused but also the need for ensuring that the victim of the crime is not unduly harassed;
- vi. Mere fact that the accused was in custody and that he will suffer by the delay could be no consideration for allowing recall of witnesses, particularly at the fag end of the trial;
- vii. Mere change of counsel cannot be ground to recall the witnesses;
- viii. There is no basis for holding that any prejudice will be caused to the accused unless the witnesses are recalled;
- ix. The High Court has not rejected the reasons given by the trial court nor given any justification for permitting recall of the witnesses except for making general observations that recall was necessary for ensuring fair trial. This observation is contrary to the reasoning of the High Court in dealing with the grounds for recall i.e. denial of fair opportunity on account of incompetence of earlier counsel or on account of expeditious proceedings;
- x. There is neither any patent error in the approach adopted by the trial court rejecting the prayer for recall nor any clear injustice if such prayer is not granted.



8. The previous counsel was engaged by the petitioner himself. He had cross-examined CW-1 at length. It is not the case where the previous counsel was not granted due opportunity to cross-examine CW-1. The new counsel only steps into the shoes of the previous counsel and cannot claim cross-examination only on the ground that on being engaged, he found that certain deficiencies in the cross-examination of the witnesses. The application under Section 311 Cr.P.C does not specify as to what questions were not put inasmuch as it vaguely states that complainant has not been properly cross-examined and some more questions needs to be put to the complainant to bring out the true facts of the case.

9. The application cannot be allowed only on such vague grounds. If such applications are to be allowed, it would have an effect of delaying the trials.

10. The learned trial Court rightly placed reliance on the decisions of the Supreme Court in Shiv Kumar Yadav (supra) and **Anurag Srivastava Vs. State of UP** (2010) (71) ACC 504, while dismissing the application.

11. I do not find any illegality or perversity in the impugned order passed by the learned trial Court. There is no merit in the petition filed by the petitioner. The same, along with pending applications is, therefore, dismissed.

RAVINDER DUDEJA, J

MARCH 27, 2025/vd