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

+ **CRL.M.C. 4305/2023 & CRL.M.A. 16163/2023**

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.....Petitioner

Through: Mr. Gautam Khazanchi (DHCLSC)
with Ms. Suruchi Jaiswal, Advocates.

versus

STATE OF NCT OF DELHI & ORS.

.....Respondents

Through: Ms. Shubhi Gupta, APP for the State
SI Satish Kumar, PS Bara Hindu Rao.
Mr. Vineet Jain, Advocate.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

ORDER

05.03.2025

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1. This hearing has been done through hybrid mode.
2. The present petition has been filed under Section 482 of the Cr.P.C. seeking the following prayers:

“a) Quash and set aside Order dated 13.03.2023 passed in Sessions Case No 29043/2016 titled ‘State v Muneeb @Muneekh’ passed by Ld. Additional Sessions Judge, Fast Track Court -02, Central, Tis Hazari Courts New Delhi;

b) Direct the Ld. Trial Court to examine the Petitioner for bringing on record materials as stated above on record for the just decision of the case;

c) Quash and set aside Order dated 28.04.2023 passed in Sessions Case No 29043/2016 titled ‘State v Muneeb @Muneekh’ passed by Ld. Additional Sessions Judge, Fast Track Court -02, Central, Tis Hazari Courts New Delhi and waive cost of Rs.5,000/- imposed on Petitioner;

d) Pass any other Order(s) as this Hon’ble Court may deem fit and proper in the facts and circumstances of the present case and in the interest of justice.”

3. Brief facts of the present case are that on 08.04.2016, an FIR bearing No. 58/2016 was registered under Sections



354/354D/323/509/34 of the Indian Penal Code, 1860 registered at P.S. Bada Hindu Rao at the behest of the present petitioner. Subsequently, after the investigation was completed, chargesheet was filed against respondents no. 2-6 for the offences punishable under Sections 376/354/354D/341/323/509/34 of the IPC. The allegations *qua* respondents no. 2-6 are that the accused persons had apprehended the petitioner while she was walking from her house to her friend's house in the neighbourhood when respondents no. 2-6 started abusing her and made certain obscene remarks towards her. Thereafter, she was surrounded by the respondents and beaten up after which they had fled from the spot. It is the case of the petitioner that she was in a relationship with respondent no. 2 (Muneeb @ Muneekh) for two years prior to the said incident and physical relations were established between the petitioner and respondent no. 2 on the pretext of marriage. After the alleged incident, the petitioner had made a PCR call (*vide* DD No. 29A) after which Constable Ram Niwas rushed to the spot at Hathikhana in Azad Market where he found the petitioner crying on the side of the road. Subsequently, the petitioner was taken to Hindu Rao Hospital where her MLC was prepared and her statement was recorded.

4. It is further stated that prosecution has examined a total of 21 witnesses and the matter is presently at the stage of final arguments before the learned Trial Court. On 27.02.2023, the petitioner had preferred an application under Section 311 of the Cr.P.C. for summoning of two witnesses and for bringing certain documents on record to mark the said documents for examination during evidence. The list of documents sought to be placed on record by the petitioner in the



said application are reproduced as under:-

- “1. Screenshots printout of friend request sent by Accused Muneeb to Petitioner on Facebook.
2. Copy of PCR Call made by Prosecutrix 22.12.2015.
3. Photographs showing calls made by Accused Aam to Prosecutrix
4. Newspaper Article dated 12.04.2017 along with copy of FIR registered against Accused Aamir under Arms Act.
5. Copy of visiting details to meet IO Vinita in PS Bada Hindy Rao register showing visits made by Prosecutrix to the Police Station to assist with investigation and further requesting Medical Examination
6. Complaint dated 18.10.2017 & 23.10.2017 to SHO Sadar Bazaar & EOW regarding hacking of Facebook account of the Prosecutrix along with Screenshots
7. Photographs of Accused Muneeb.
8. Copy of Complaint dated 03.10.2016 filed against accused Muneeb by the Prosecutrix at PS Sadar Bazaar.
9. Copy of FIR No. 139/2016 filed against Accused Muneeb along with Statement of prosecutrix’s father under Section 161 CrPC.
10. Cross FIR filed by Accused Muneeb bearing FIR No. 140/2016 against the Prosecutrix and her family.
11. Copy of FIR against Accused Muneeb and ex-husband of prosecutrix dated 27.09.2016.
12. Copy of Fatwa along with translation declaring divorce between the Prosecutrix and her ex-husband.
13. Representation dated 06.05.2016 written by Prosecutrix to SHO PS Sadar Bazaar.
14. Copy of Examination in Chief of family friend of Prosecutrix in another pending case against the ex-husband of the Prosecutrix.
15. Medical documents of the Prosecutrix.”

5. *Vide* order dated 13.03.2023, the learned ASJ had partly allowed the application filed by the petitioner to the extent of recalling the petitioner as PW-4 and for placing on record the documents specified at serial nos. 1, 2, 3 and 12 of the said application. While allowing the said application partly, a cost of Rs. 5000/- was also imposed on the



petitioner. A second application was filed by the petitioner on 24.04.2023 for reconsideration of taking the documents mentioned at serial nos. 4-11 and serial no. 14 of the previous application dated 27.02.2023 on record and to waive the cost which was imposed *vide* order dated 13.03.2023. The second application filed by the petitioner was dismissed by the learned ASJ *vide* order dated 28.04.2023 and the petitioner was directed to lead prosecution evidence in terms of the order dated 13.03.2023. The order dated 13.03.2023 is reproduced as under:-

“Matter is pending today for order on application u/s 311 Cr.P.C more by the prosecutrix seeking summoning of two witnesses, namely, Pld/PCR Inspector Rajinder Prasad and HC Kebar Singh. She has further stated that she also wants to exhibit certain documents through PW-4 i.e. her further examination. As per the prosecutrix, she could not produce the documents earlier as she was mentally disturbed, depressed and harassed by the police during the investigation as the IO was favoring the accused persons. Hence this application. A list of documents was also filed alongwith the application.

Reply to the said application was filed by accused persons, namely, Mohd. Muneeb, Mohd. Zumain and Mohd. Harish. It is stated in their reply that the applicant has neither submitted an affidavit in support of the application nor the same is forwarded by Ld. Addl. PP and hence, not maintainable. It is further stated that the applicant had moved another application claiming the same relief but said application was withdrawn on 23.01.2023 and despite opportunity being given to her, she did not file fresh application and so the opportunity to file any further application, was closed by this Court, on 13.02.2023.

It is further alleged that prosecutrix is herself delaying the proceedings in this case and infact due to her absence, 8-10 adjournments for her evidence have been given. It is further stated that the applicant has not mentioned in her application as to how the documents sought to be filed, are relevant and necessary to the present case. It is further stated that most of the documents sought to be filed were already in knowledge and possession of prosecutrix and she could have filed it during her evidence which



lasted from 19.10.2017 to 26.02.2019 but She did not do so. Specifically, documents at serial no. 1,2,3,4,6,7,9 & 11 to 15 were already in her possession but she neither handed over those documents to IO nor produced the same in Court during the trial or her deposition. It is further contended that documents at Srl. no. 9 to 11 have no connection in the present case as those cases are pending in trial in other courts. It is further stated that the present application has been moved at the fag end of the trial without any valid reason and so prayer is made to dismiss the same with cost. No reply filed by other accused persons.

Arguments on the said application were heard from both sides and I have also perused the record .

At the outset, it is pertinent to mention that the present application u/s 311 Cr.P.C has been moved by the prosecutrix on her own and has not even been forwarded by the Ld. Addl PP. However, in view of the judgment of Hon'ble Apex Court in the case titled as **Mina Lalita Baruwa Vs, State of Odisha & Ors, Criminal Appeal No. 2044 of 2013**, I find the present application to be legally maintainable but in the interest of justice.

However, it is rightly contended on the part of the Ld. Defence Counsel that the application is somewhat vague in nature and does not offer any reason as to how the documents sought to be filed through this application, are relevant to the present case and necessary for just and fair decision in the matter. Moreover the present application has been moved after the matter got listed for final arguments, hence there is a substantial delay. However, it is a settled law that the determinative factor in cases of such an application is whether it is necessary for just decision of the case or not, to bring additional evidence on record.

In **Iddar & Ors. Vs. Aabida & Anr. Am 2007 SC 3029**, the Hon'ble Supreme Court while underlying the object of Sec 311 Cr.P.C., observed that:-

“11. 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. (emphasis added)"

In this light, I will consider the present application. Since the applicant does not disclose the reasons for filing those documents, the Court is compelled to embark on an exercise suo motu to determine the relevancy of those documents to the present case. Upon perusal of the documents sought to be filed by the prosecutrix, in my considered opinion, only the documents at serial 10. 1, 2, 3 and 12 of the list of documents may be relevant to the present case. As regards document at serial no. 4, the same pertains to copy of the newspaper report which is no evidence. Document at serial no. 5 is with respect to medical examination of prosecutrix sought to be conducted later on, since the prosecutrix admittedly denied for her internal examination initially but the document is of no significance in absence of internal examination. The document at serial no. 6 is with respect to the events which happened subsequently after the registration of the present FIR. The document at serial no. 7 is with respect to proving the alleged influential character of accused Muneeb but bare perusal of the photographs does not disclose anything material for this case. The document at serial no. 8 is another complaint against the accused Muneeb but made after registration of this FIR and documents at serial no. 9 to 11 & 13 to 14 pertain to other cases against accused Muneeb and also not relevant for the present case. It needs to be reiterated that the prosecutrix has not mentioned any reason as to how the said documents are material for just and fair decision of this case and hence they are discarded.

Though the application has been moved belatedly but considering the fact that the applicant is a rape victim lady and prejudice may be cause to her if the evidence in her possession and relevant this case, are not brought on record. Hence, in



view of the above observation, the present application. u/s 311 Cr.P.C is partly allowed but only to the limited extent for recall of prosecutrix as PW-4 to place on record and prove documents at serial no. 1 to 3 and 12 and no other documents. It is also apparent from the record that prosecutrix has delayed the proceedings in this case by seeking repeated adjournments. Hence, the cost of Rs. 5,000/- is imposed upon the prosecutrix to be deposited in DLSA, Central. It is further clarified that only one opportunity would be given to the prosecutrix to lead further evidence qua the above documents and no further opportunity shall be given under any circumstances. Payment of cost shall be condition precedent for the prosecutrix to get herself examined. Application is accordingly, disposed of. Put up for PE and payment of cost on 28.04.2023. Date is given at the request of counsel for the accused.”

(emphasis supplied)

Thus, aggrieved by the same, the petitioner has filed the present petition.

6. Learned counsel appearing on behalf of the petitioner submits that documents between serial number 5-11 and serial number 13 are relevant for decision of the present case and will have a bearing on the outcome of the proceedings before the learned Trial Court as the trial in the present case is at the stage of final arguments. Further, it is his submission that the documents sought to be present by the petitioner are relevant to show the past conduct of the respondents no. 2-6. It is also submitted that the accused respondents have previous antecedents of harassing and blackmailing the petitioner. Since the discovery of the relevant documents was made at a belated stage during the trial, the said documents could not be brought on record at the relevant point of time. It is his further submission that the discretion under Section 311 Cr.P.C has to be exercised judiciously and if the materials sought to be brought



on record are essential for the adjudication of the case, they ought to be allowed to be brought on record.

7. A perusal of the aforesaid order shows that the learned Trial Court has meticulously examined the nature of the documents sought to be proved on behalf of the petitioner. Admittedly, these documents do not relate directly to the incident which is the subject matter of trial. The petitioner has not been able to demonstrate as to how the said documents are relevant and material for the just decision of the case pending before the learned Trial Court. This Court *vide* order dated 02.06.2023 had waived of the costs imposed by the impugned order.

8. In these facts and circumstances no ground is made out to interfere with the order dated 13.03.2023 passed by the learned Trial Court.

9. Petition is dismissed and disposed of.

10. Pending application(s), if any, are also disposed of.

11. Order be communicated to the learned Trial Court for necessary information and compliance.

MARCH 05, 2025/sn/sc **AMIT SHARMA, J**
Click here to check corrigendum, if any