



2025:DHC:8088



\$~18

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

Date of decision: 14.08.2025

+ CRL.M.C. 3152/2025 and Crl.M.A. No. 20812/2025

RANJAN KUMARI @ JYOTI Petitioner
Through: Mr.Ritesh Khatri, Advocate.

versus

STATE OF GNCT OF DELHI & ANR.Respondents
Through: Mr.Digam Singh Dagar, APP
with SIanjali and SI Sushil

CORAM:
HON'BLE MR. JUSTICE ARUN MONGA

ARUN MONGA, J. (ORAL)

1. The petitioner, vide the present petition, seeks to set aside the order dated 10.03.2025, passed by the learned Additional Sessions Judge 01(POCSO), Saket, New Delhi, in a case arising out of FIR No.551/2021, dated 28.08.2021, registered at P.S. Kalkiji, for offences under Sections 363, 323, 344, 366A, 370, 376, 377, 506, 509, 120B, and 34 IPC read with Sections 6, 12, and 17 of the POCSO Act whereby his application under Section 311 Cr.P.C seeking recall of PW-3/mother of victim was dismissed.
2. Issue notice. Learned APP for State accepts notice.
3. The case set up by the petitioner is as under:-
 - 3.1 Petitioner is facing trial in the said case, wherein the FIR,



charge sheet, order on charge dated 04.06.2022 and statements recorded under Section 161 Cr.P.C., including that of PW-3 (mother of the victim), form part of the judicial record.

3.2 The matter is presently at the stage of prosecution evidence, where 6 out of 27 witnesses have been examined, including PW-3 and the victim. It is pertinent to note that the testimony of PW-3 (mother of the victim) preceded that of the victim, thereby resulting in contradictions and inconsistencies which require clarification.

3.3 During the examination-in-chief and cross-examination of PW-3, certain facts had emerged. However, during subsequent deposition of the victim, the latter gave vague and evasive replies on several material facts stated by her mother (PW-3).

3.4 During her deposition, the victim gave vague and evasive replies on several material aspects, thereby necessitating the recall of PW-3 for further examination in order to test and corroborate such facts in the interest of justice.

3.5 Certain material facts, including the victim's photographs, details of her school admission, and her second marriage, came to light only after the examination of PW-3. These facts are within the knowledge of PW-3 and can be duly established only through her further testimony. However, since the victim was examined subsequently, the said contradictions could not be addressed through further questioning of PW3.

3.6 In a matter of such grave nature, the truth can only be established by permitting further examination of PW-3, as she alone can clarify the contradictions and bring correct facts before the Court,



especially after the victim's testimony has already been recorded by recall and re-examination of PW3, as her further evidence is essential for a fair and just adjudication of the case.

3.7 Ld. ASJ failed to exercise the wide discretionary power vested under Section 311 Cr.P.C. in a judicious manner and instead rejected the application arbitrarily, thereby defeating the very object of the provision, namely, to elicit the truth and secure a just decision.

3.8 The re-examination of PW-3 (mother of the victim) was essential in view of the subsequent cross-examination of the victim and the emergence of new facts; however, the Trial Court dismissed the application mechanically without appreciating the necessity of such testimony for ensuring a fair trial.

3.9 Impugned order overlooks the significance of the fresh facts which surfaced during the deposition of the victim, and thereby denies the Petitioner a fair opportunity to bring material evidence on record, contrary to the settled principle that criminal trials must lean in favour of affording the accused full scope of defence.

3.10 Learned Trial Court erred in disregarding that mistakes or inadvertent omissions in bringing evidence on record should not prejudice the accused, and that the Court is duty-bound to allow correction of such lapses in order to secure a just adjudication.

3.11 Refusal to recall PW-3 under Section 311 Cr.P.C. defeats the paramount objective of truth and justice, thereby directly impairing the Petitioner's constitutional right to a fair trial.

3.12 Impugned order fails to appreciate that the power under Section 311 Cr.P.C. is not merely discretionary but also imposes a duty upon



the Court to summon or recall material witnesses if their evidence appears to be essential for the just decision of the case.

3.13 The Ld. ASJ failed to exercise such discretion in accordance with the settled principles of law laid down by the Hon'ble Supreme Court and various High Courts governing the scope and application of Section 311 Cr.P.C.

3.14 Denial of the application for recall of PW-3 severely prejudices the defence, violates the principles of natural justice and fair play, and undermines the Petitioner's fundamental right to defend himself effectively.

4. Arguments on the same lines have been addressed by the learned counsel for the petitioner.

5. Learned APP has opposed the petition and contended that the impugned order is perfectly just and legal, which does not call for any interference from this Court.

6. In the aforesaid backdrop, I have heard the rival contentions and perused the case file.

7. Impugned order dated 10.03.2025 passed by the learned Additional Sessions Judge 01(POCSO) South East, Saket, New Delhi , reads as under:

*“Present: Sh. Aditya Kumar, Ld. Addl. PP for the State.
None for DCW.*

*Ms. Babita Sharma in person and Sh. Ritesh Khatri
through V.C, Ld. Counsels for applicant/accused
Ranjan*

and Ranjana@Jyoti.

*This is the application u/s 311 Cr.P.C seeking recalling
of PW-3/mother of victim moved on behalf of above*



named applicant/accused.

I have heard arguments on the application from both the sides and perused the reply and record.

It is argued on behalf of applicants that the mother of victim was examined on two dates i.e. 27.05.2023 and 04.12.2023 whereas the victim was examined on 28.02.2024. It is further argued that since mother of victim was examined prior to the examination of victim, certain new facts which have come during the cross-examination of victim are required to be put to the mother of victim for bringing out the truth of this case.

It is further argued that the provisions of section 3II Cr.P.C can be invoked where it is necessary for bringing out the truth.

It is also argued that the recalling of PW-3 is necessary for fair and just decision of this case. Therefore, it is prayed that PW-3 may be recalled for her cross examination on any terms and conditions as this Hon'ble Court may deem appropriate.

Per contra, Ld. Addl. PP for the State has opposed the application. It is argued that the substantial chief examination of the victim had already been concluded on 01.10.2022 and the remaining examination was conducted on 28.02.2024 on which date, the clothes which were worn by the victim at the time of incident were shown to her. It is further argued that argument of defence that mother of victim was examined prior to the victim is not correct and as such, the application should not be allowed at all.

I have considered rival submissions and perused the record.

The main contention of the defence by way of this application is that the mother of victim was examined prior to the examination of victim and that certain new facts have emerged during the cross examination of victim which are required to be put to the mother of victim.

On perusal of the record, it is revealed and as been



argued by Ld. Addl. PP for the State that the substantial examination-in-chief of victim was concluded on 01.10.2022 and only the clothes were shown to the victim on 28.02.2024 and hence, the argument of defence that examination in chief of victim was conducted on 28.02.2024 is against the record.

The record further revealed that the mother of the victim was examined on 27.05.2023 and 04.12.2023 which is much later than the date of the examination of victim i.e. 01.10.2022 and as such, the argument of defence is against the record.

So far as the argument of defence that certain new facts have emerged during the cross-examination of victim which are required to be put to the mother of victim is concerned, the said new facts/contradictions cannot be allowed to be put to the PW-3/ mother of victim by exercising the powers u/s 311 Cr.P.C as the said contradictions can be argued at the stage of final arguments.

In the recent judgment in the case of Varsha Garg v State of Madhya Pradesh &Ors. (2022) the Supreme Court of India expressed the basic parameters for the application of Section 311 in the statement, which reads as "essentiality of the evidence of the person who is to be examined coupled with the need for the just decision of the case constitutes the touchstone which must guide the decision of the court."

In view of the above and in view of the submissions made by Ld. Addl. PP for the State, this Court is of the considered opinion that allowing the application would be abuse of process of law. Therefore, no further opportunity can be granted to the accused to cross examine the mother of victim.

Resultantly, application stands dismissed.

Sd/-

ASJ-01(POCSO)

South East, Saket Courts,



2025:DHC:8088

*New Delhi/10.03.2025”*

8. Having heard both sides and on perusal of the record, it transpires from the impugned order that the complainant/informant PW3 (mother of survivor/ victim) was examined on 27.05.2023 and 04.12.2023. Thus, her cross-examination was completed on 04.12.2023. As against this, even the examination-in-chief of the victim/survivor was completed on 28.02.2024. It was thereafter that her cross-examination commenced and she was cross-examined. Of course, part of her examination in chief is stated to have been recorded prior to 04.12.2023, the date of completion of the cross examination of her mother.

9. The petitioner's case is that during the examination-in-chief and cross-examination of PW-3, certain facts had emerged. However, during subsequent deposition of her daughter (the victim), the latter gave vague and evasive replies on several material facts stated by her mother (PW-3), including the victim's photographs, details of her school admission and her second marriage. These facts are within the knowledge of PW-3 and can be ascertained only through her further testimony. In the peculiar premise, certain relevant factual clarifications remained unattended at the time of conclusion of cross-examination of PW-3 on 04.12.2023, which was prior to the commencement of cross-examination of her daughter, after completion of the latter's examination in chief on 28.02.2024. The clarifications about them are required to be put on record by way of the further cross examination of her mother. Refusal to re-call her



mother (PW3) for further cross-examination would deprive the petitioner a valuable opportunity to impeach and challenge her testimony, which may wittingly be held against the petitioner and cause severe prejudice to him. This would mean the petitioner being denied a fair trial.

10. Taking into consideration the overall facts and circumstances of the case, I am of the opinion that PW3 is a material prosecution witness and her evidence is essential to ascertain the facts and for a just decision of the case.

11. Under section 348 of the Bhartiya Nagrik Suraksha Sanhita, 2023, the Court shall summon and examine or re-call any person already examined if his evidence appears to it to be essential to the just decision of the case.

12. To my mind, the prosecution would not suffer any serious prejudice if an opportunity is allowed to the petitioner for further cross-examination of PW3. As against this, the refusal to do is likely to cause serious prejudice to the petitioner facing trial for the alleged grave offences.

13. Trite it may sound, right to fair trial as envisaged under Article 21 of the Constitution of India and that in an evenly balanced situation, it would rather desirable for the Court to lean in favour of the accused and not prosecution particularly in a case entailing heavy punishments as the present one.

14. As an upshot, the impugned order is set aside. The application under section 311 filed by the petitioner is allowed. Petitioner shall be granted one effective opportunity by the learned Trial Court for



2025:DHC:8088



further cross examination of PW3 (mother of the survivor) in accordance with law. However, the learned Court shall be at liberty to grant further opportunity depending upon its work but no adjournment shall be granted at the instance of the petitioner.

ARUN MONGA, J

AUGUST 14, 2025/SV