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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Judgment delivered on: 21.04.2025*+ **CRL.M.C. 3480/2022, CRL.M.A. 14606/2022, CRL.M.A. 23002/2024**

BRIJ KISHOR MISHRA

.....Petitioner

Through: Mr. Amit Nahata, Advocate

versus

THE STATE (GOVT. OF NCT OF DELHI)
AND ORS.

.....Respondents

Through: Mr. Ajay Vikram Singh, APP
for the State IO Insp Deepak
Sharma from PS Nariana.
Mr. Kamran Malik, Adv. for
R-2.**CORAM:****HON'BLE DR. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****DR. SWARANA KANTA SHARMA, J**

1. By way of this petition preferred under Section 482 of the Code of Criminal Procedure, 1973 [hereafter '*Cr.P.C.*'], the petitioner seeks setting aside of the order dated 22.03.2021, passed by the learned Metropolitan Magistrate, Patiala House Court [hereafter '*Trial Court*'] in New Case No. 47646/016 titled 'State vs. Pradeep Bajaj', as well as the order dated 09.09.2021, passed by the learned Principal District & Sessions Judge, Patiala House Courts, New Delhi



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[hereafter '*Sessions Court*'] in Criminal Revision Petition No. 240/2021.

2. A brief outline of the facts, leading to the filing of present petition are that the FIR No. 154/2011, was registered on 18.09.2011 at Police Station Naraina, Delhi for the offences punishable under Sections 325/341/509/34 of the Indian Penal Code, 1860 [hereafter '*IPC*'], on the complaint of the present petitioner, against accused persons namely Pradeep Bajaj, Satvinder Singh and Sonu Bajaj. After completion of investigation, chargesheet was filed against the accused persons. Vide order dated 12.10.2012, charge was framed against the accused persons for offence under Sections 325/341/509/34 of IPC, and summons were issued to the witnesses. PW-1 was examined, cross-examined and discharged on 04.03.2013. On 16.10.2014, the examination-in-chief of the petitioner herein (the complainant) i.e. PW-3 was partly recorded, and further examination was deferred for want of case property. On 27.02.2015, the petitioner's remaining examination-in-chief was recorded and he was partly cross-examined also, and further cross-examination was deferred. The record reveals that on 19.05.2015, the petitioner was not present; on 14.10.2015, he was again not present and an application seeking adjournment had been moved on his behalf; on 25.01.2016, the petitioner again did not appear and he was granted final opportunity for his further cross-examination. Again on 24.06.2016, the petitioner did not appear for his further cross-examination. Thus, on 24.06.2016, the learned Trial Court observed



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that PW-3 was not appearing before the Court for the last many dates, one witness namely Smt. Malti Devi had already been dropped from the list of prosecution witnesses, the case had been pending at the stage of prosecution evidence for about four years and sufficient opportunities had been granted to the prosecution for concluding their evidence. Accordingly, the prosecution evidence was closed *vide* order dated 24.06.2016 and the matter was put up for recording statements of accused persons. The statement of accused persons was recorded on 24.01.2017, and thereafter, the matter remained at the stage of leading and recording of Defence evidence. On 25.07.2018, an application under Section 311 of Cr.P.C. was filed by the complainant/petitioner seeking permission for his remaining cross-examination, but the same was dismissed *vide* order dated 02.09.2019 by the learned Trial Court since the same had been moved after a delay of about two years. However, the said order was challenged before the learned Sessions Court, and *vide* order dated 09.01.2020, the learned Sessions Court had allowed the remaining cross-examination of the petitioner, subject to payment of costs. On 30.01.2020, the petitioner i.e. PW-3 was cross-examined and discharged.

3. Notably, on 12.02.2020, another application under Section 311 of Cr.P.C. was filed by the State, submitting that two accused persons namely Satvinder Singh and Sonu Kumar had not cross-examined PW-1 and PW-2, as they had been cross-examined only by the learned counsel for accused Pradeep Bajaj, and further that PW-5 to 8



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had not been examined during the prosecution evidence. By way of order dated 22.03.2021, the said application was dismissed by the learned Trial Court, after noting that *firstly*, the other two accused persons did not wish to cross-examine the PW-1 and 2 separately and that they were willing to adopt the cross-examination conducted by the learned counsel for accused Pradeep Bajaj, and *secondly*, that the State had filed this application after a considerable amount of delay, even though the prosecution evidence had been closed on 24.08.2016. The relevant portion of order dated 22.03.2021 is set out below:

“ Perusal of record shows that the PE in the present case was closed by the order of this court dt. 24.06.2016 while observing that sufficient opportunities have already been granted to the prosecution for PE. The present application has been filed after the delay of more than two years without any new fact coming to the knowledge of the prosecution.

It is also important to note that this court vide order dt. 02.09.19 has dismissed the application of the complainant for recalling himself for further cross-examination on the ground that allowing said application would amount to review of order dt. 24.08.2016.

After perusal of record, this court is of the view that no ground is made out for re-opening of PE, which was closed vide order dt. 24.08.2016 after noting the submissions of Ld. APP for the State. It is not the case of the prosecution that some new material has come on record after passing of order dt. 24.08.2016 and hence this court does not deem it fit to allow the prayer of the Prosecution of summoning its witnesses.

Resultantly application u/s 311 Cr.PC stands dismissed.”

4. Thereafter, the present petitioner had challenged the aforesaid order by way of revision petition before the learned Sessions Court,



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which also came to be dismissed *vide* impugned order dated 09.09.2021. The relevant portion of order dated 09.09.2021 is set out below:

“4. It is pertinent to mention here that the application which was dismissed *vide* the impugned order was moved by the State. However, the State has not chosen to challenge the impugned order. It is also pertinent to mention here that in the earlier Revision Petition which was allowed, the revisionist had only sought the permission for completing his cross examination. It is also pertinent to mention here that the revisional jurisdiction can be invoked only if there is an illegality, irregularity or incorrectness in the order of Ld. Trial Court. Revision against an interlocutory order is also barred. I do not find any illegality or infirmity in the impugned order. Hence, the revision petition is dismissed.”

5. The petitioner, who is the complainant in the present FIR, has now assailed these orders, and the learned counsel appearing for the petitioner has argued that the impugned orders are bad in law, and that after the petitioner had been allowed to be further cross-examined as per order of the learned Sessions Court, the other remaining prosecution witnesses should also have been allowed to be examined, for just and proper decision of the case in hand. It was contended that the learned Trial Court had dismissed the application under Section 311 of Cr.P.C. without appreciating the fact that PW-5 to 8 had not even been summoned at the time when prosecution evidence was closed. Further, reliance has been placed by the learned counsel on the decision in case of ***P. Chhaganlal Daga v. M. Sanjay Shaw***: 2004 SCC (Cri) 183, wherein the Hon’ble Supreme Court had allowed the application under Section 311 of Cr.P.C., even though



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final arguments had been concluded and the matter had been posted for pronouncement of judgment. Therefore, it was prayed that the present petition be allowed and impugned orders be set aside.

6. The learned counsel for the respondent no. 2 i.e. accused Pradeep Bajaj, on the other hand, has opposed the present petition and argued that the trial has already been concluded and the case has reached the stage of pronouncement of judgment. It was argued that it is apparent from the records of the case that the application in question had been moved after a considerable unexplained delay on the part of State, and the same was rightly dismissed by both the courts below, after taking into account the conduct of the prosecution as well as the complainant/petitioner herein. It was further contended that the Hon'ble Supreme Court has held that granting liberty to the prosecution to recall a witness, after the accused has been examined under Section 313 of Cr.P.C., may amount to filling up lacunas existing in the case of prosecution. It was thus prayed that the present petition be dismissed.

7. This Court has **heard** arguments addressed by both the parties, and has perused the material placed on record including the Trial Court record.

8. In the present case, it is an undisputed fact that the prosecution evidence was closed on 24.06.2016 in the presence of the learned APP for the State, after the learned Trial Court observed that sufficient opportunities had already been granted to the prosecution.



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The said order specifically recorded the repeated absence of PW-3, the main complainant, on several dates, which led to the closure of prosecution evidence. In this Court's view, at that point in time, the learned APP would have been fully aware that PW-5 to PW-8 had not been examined. However, neither the State nor the complainant took any steps to seek further time, nor was the said order challenged. For over three years thereafter, there was complete silence on the part of the prosecution and the complainant regarding the examination of these remaining witnesses.

9. It was only in February 2020, after an unexplained and considerable delay, that an application under Section 311 of Cr.P.C. was moved by the State seeking to summon PW-5 to PW-8. By then, the trial had significantly progressed – the statements of all accused persons under Section 313 of Cr.P.C. had already been recorded, and substantial part of defence evidence had also been led.

10. This Court also notes that the application under Section 311 of Cr.P.C., which was dismissed by way of order dated 22.03.2021 by the learned Trial Court, had been filed by the State. However, despite that, the State chose not to challenge the said order. The revision petition before the learned Sessions Court was rather preferred by the complainant, as also the present petition before this Court.

11. The reliance placed by the petitioner on the decision of *P. Chhaganlal Daga v. M. Sanjay Shaw* (*supra*) can be of no help, as the same is clearly distinguishable on facts. Even in that case, it was



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observed that a lacuna in the prosecution cannot be equated with an inadvertent omission by the public prosecutor. However, the facts of the present case reflect neither a mere oversight nor a genuine lapse, but rather a clear unexplained inaction for more than three years on the part of both the prosecution and the complainant.

12. It has been held by Hon'ble Supreme Court in catena of judgments, the recall of witness is not a matter of course and power under Section 311 of Cr.P.C. has to be exercised judiciously, with caution and circumspection, and not arbitrarily or capriciously, on the basis of facts and circumstances of each case, and the discretionary power has to be balanced carefully with considerations such as uncalled for hardship to the witnesses and uncalled for delay in trial [Ref: *Vijay Kumar v. State of U.P.*: (2011) 8 SCC 136; *State (NCT of Delhi) v. Shiv Kumar Yadav*: (2016) 2 SCC 402; *Ratanlal v. Prahlad Jat*: (2017) 9 SCC 340].

13. In view of the foregoing discussion, and considering that the order dated 24.06.2016 was never challenged by either the State or the complainant for more than three years, and that the trial proceeded thereafter through crucial stages including the examination of the accused and recording of defence evidence, this Court finds no reasons to interfere with the impugned orders passed by the learned Trial Court and learned Sessions Court.

14. Accordingly, the present petition stands dismissed, alongwith pending applications.



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15. The judgment be uploaded on the website forthwith.

DR. SWARANA KANTA SHARMA, J

APRIL 21, 2025/zp