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

+ **CRL.M.C. 6451/2025 & CRL.M.A. 27226/2025**

GOVIND MANDAL

.....Petitioner

Through: Ms. Malvika Kulkarni,
Adv.

versus

STATE OF NCT OF DELHI

.....Respondent

Through: Ms. Priyanka Dalal, APP
for the State.
IO SI Arti, PS VK North.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

% **11.09.2025**

1. The present petition is filed challenging the order dated 06.08.2025 (hereafter '**impugned order**'), passed by the learned Trial Court in SC No. 257/2018 arising out of FIR No. 281/2018 ('**FIR**'), registered at Police Station Vasant Kunj North.

2. By the impugned order, the application filed by the petitioner under Section 348 of the Bharatiya Nyaya Suraksha Sanhita, 2023 read with Section 311 of the Code of Criminal Procedure, 1973 was dismissed.

3. The said application was filed by the petitioner seeking recall of PW-1 (victim), PW-2 (mother of victim) and PW-6 (Junior Forensic Chemical Examiner) for further examination on the ground that the previous counsel had not posed important questions to the said witnesses.

4. The FIR was registered long back on 10.06.2018. The victim, who was around 14 years of age at that time, alleged that the petitioner (the victim's step father) had been sexually



assaulting her since the year 2016. It is alleged that the petitioner committed penetrative sexual assault on the victim on 08.06.2018.

5. Perusal of the chargesheet indicates that the petitioner had earlier also been sent to jail in the year 2016 for committing the sexual assault on the victim after which he was released on bail.

6. The learned counsel for the petitioner submits that PW-1 and PW-2 were not thoroughly examined and certain new facts had come to light when the counsel, who was engaged subsequently, interacted with the petitioner in jail.

7. She submits that questions in relation to the age of the victim, clothes/undergarments and the timeline of events have also not been put properly to the said witnesses.

8. She further submits that PW-6, who was a Junior Forensic Chemical Examiner and had conducted the biological and DNA examination, was also not properly cross examined.

9. I have heard the counsel and perused the record.

10. Before resorting to consider the facts of the present case, it is essential to note that Section 311 of the CrPC lays down a procedure for summoning or recall of any witness at any stage of trial which can be permitted in order to prevent failure of justice. It is not in doubt that the learned Trial Court has power under Section 311 of the CrPC to summon witness and call for evidence at any stage of trial if it is felt that the same is required for a just decision of the case. The power, however, is not to be exercised in routine manner.

11. In the impugned order, the learned Trial Court has noted that the victim (PW-1) was examined on 26.02.2020 and she was



thoroughly cross examined. It is also noted that the mother of the victim (PW-2) was also duly cross examined on behalf of the accused and PW-6 was examined way back on 10.01.2024 and she was also duly cross examined.

12. As noted above, the FIR was registered way back in the year 2018 and the record indicates that the victim and her mother were examined long back in the year 2020. In the opinion of this Court, the learned Trial Court rightly observed that recalling of the witnesses at this stage will only bring further trauma to the victim. The learned Trial Court also rightly noted that the DNA matches conclusively and no specific new facts have been cited so as to recall the witnesses for re-examination.

13. The law specifically provides that the victim's trauma shall be minimised in sexual assault cases, especially when the alleged accused is a family member. Section 35 of the Protection of Children from Sexual Offences Act, 2012 categorically provides that the trial in offences of such nature should be completed within a year after the Special Court takes cognizance and the evidence of the child shall be recorded within thirty days of taking cognizance.

14. Recalling of the witnesses, at this stage, after almost seven years of incident would only amount to further victimization of the child. The learned Trial Court also rightly observed that plea of the accused that no questions in respect of his clothes, exact events and age were put to the victim was unmerited. The relevant portion of the impugned order is as under :

“30. The plea of Ld. Counsel that no questions with respect to clothes, exact events and age were put to the witnesses is rejected as clothes were shown to the victim while her examination was going on in presence of the accused and



his counsel and she has identified the same as belonging to her. Even the bedsheet in question was shown to the victim. The victim was asked the specific dates when the offence was committed by the accused and even questions with related to her age were put to the victim. The plea that the DNA was incorrectly matched by the FSL is humbly rejected as not only the DNA profile matched on the clothes of the victim with that o f the accused but the DNA as generated from the vaginal secretion were also matched with the samples of the accused and the present application appears to be attempt to scuffle the course of trial as only IO of the case is remains to be examined.”

15. Moreover, the power under Section 311 of the CrPC cannot be exercised at such a belated stage merely on account of change in counsel. Different opinion of a subsequent counsel on how the case is to prosecuted cannot be a legal ground for recalling a witness. If such arguments are allowed, the trial would be a never-ending endeavour since after every few months, a new lawyer with a different strategy would be engaged, who would like to cross examine the witnesses again.

16. In view of the aforesaid discussion, this Court finds no reason to interfere with the impugned order. The petition is, therefore, dismissed. Pending application also stands disposed of.

17. It is made clear that the present order has been passed only for the purpose of deciding the challenge to the impugned order and should not influence the outcome of the trial or be taken as opinion of this Court on the merits of the case.

AMIT MAHAJAN, J

SEPTEMBER 11, 2025

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