

2025:DHC:11632



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

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Reserved on: 25.09.2025**Pronounced on: 19.12.2025**+ **CRL.M.C. 8155/2024****DEEPAK MINDA & ORS.**

.....Petitioners

Through: Mr. Hrishikesh Baruah, Mr. Utkarsh Dwivedi, Mr. Anurag Mishra, Mr. Kumar Kshitij, Mr. Yashaswy Ghosh, Advocates.

versus

STATE OF NCT OF DELHI & ANR.

.....Respondents

Through: Mr. Tarang Srivastava, APP with SI Chinki Yadav, PS-Shalimar Bagh.

Mr. Jeevesh Bindal, Advocate for R-2.

CORAM:**HON'BLE MR. JUSTICE RAVINDER DUDEJA****JUDGMENT****RAVINDER DUDEJA, J.**

1. This is a petition under Section 528 of the BNSS, 2023 (earstwhile Section 482 of the Code of Criminal Procedure, 1973) against the order dated 24.09.2024 passed by the JMFC-07, North-West Rohini Court, New Delhi vide which the complainant's application under section 311 Cr.P.C., to examine PW-8 was allowed.

**Brief facts of the case:**

2. The FIR records that on 10.06.2005 at about 8:00 a.m., while the complainant, Harish Bindal, was reading the newspaper at his residence at AE-167, Shalimar Bagh, his wife allegedly injured herself by breaking her own bangle and called the police, following which she was taken to the hospital. At around 8:30 a.m., after she had left, his brothers-in-law Sunil Minda and Deepak Minda, accompanied by Kunal Minda, Ashwani Jain, Purakh Chand Minda and Kalpana Minda, allegedly entered his house forcibly, demanding withdrawal of a pending Rs. 3.5 crore credit case, and on his refusal, abused, assaulted, and dragged him into the street, during which Deepak Minda allegedly struck him, breaking his tooth and causing bleeding. The complainant dialled the PCR, and during the scuffle, Sunil Minda's spectacle glass fell and was retained by him. The medical examination (M.E. No. 39841) declared his injuries grievous, leading to registration of the aforesaid FIR under Sections 325/452/34 IPC.

Submissions of the petitioner:

3. Learned counsel for the petitioners submitted that the impugned order dated 24.09.2024 is wholly illegal, without jurisdiction, and liable to be set aside. It was submitted that under Sections 301 and 302 of the Code of Criminal Procedure, 1973, though a private person may appoint a pleader to assist the Public Prosecutor, the conduct of prosecution remains exclusively within the domain of the Public



Prosecutor, unless specific permission is granted to the private party to conduct the trial in terms of Section 302(1), which has admittedly never been sought by Respondent No. 2 (complainant).

4. Consequently, the application under Section 311 of the Cr.P.C., at the instance of the complainant is not maintainable. Reliance was placed upon the judgements of the Kerala High Court in *Somasundaram v. P. Chandra Bose & Anr.* 2001 CrL. L.J. 4370 and of the Supreme Court's precedent in *Rekha Murarka v. State of West Bengal* (2020) 2 SCC 474, to submit that the Public Prosecutor holds paramount status in criminal proceedings. It was emphasized that PW-8 (SI Ramphal) has deposed strictly in terms of his statement recorded under Section 161 of the Code and has referred to DD No. 16A dated 10.06.2005, the complainant's earlier application under Section 165 of the Code was dismissed on 18.05.2024, as reflected in the testimony of PW-8 dated 18.05.2024, and therefore, a subsequent application under Section 311 on the same premise is impermissible.

5. It was further submitted that the complainant's reliance on the Medical Examination Report of Sunita Bindal (Ex. PW-3/A) is untenable as the said document was neither part of the chargesheet nor prepared by PW-8, it was produced by PW-3 during his examination in chief, objections were duly raised to its production, and in any case, PW-3 Tarun Bindal's presence cannot be established thereby. The trial



is founded upon statements recorded under Section 161 of the Cr.P.C., culminating in the chargesheet, and the prosecution cannot now depart from the said version or allow the complainant to set up a new case introducing facts not contained in the original statements due to which the petitioners shall have to counter not one but two set of facts. It is argued that the impugned order allowing application has been passed without jurisdiction, fails to consider these legal positions and hence deserves to be set aside.

Submissions of the Respondent no. 2/complainant:

6. Learned counsel for the respondent no. 2/complainant submits that the earlier order rejecting the application under Section 165 of the Evidence Act was not a decision on merits, as the trial court did not adjudicate upon the relevance of the questions sought to be put, and the dismissal was solely on the ground that such an application could not be moved by the complainant. It is submitted that when the subsequent application under Section 311 Cr.P.C. was filed, the trial court was duty-bound to apply its judicial mind to the relevance and necessity of recalling or further examining the witness, which it rightfully did, and having found the evidence relevant, the court was fully empowered to invoke Section 311 Cr.P.C. in furtherance of a just decision.

7. It is submitted that there is no question of review of the earlier order which dismissed the complainant's application under section



165 Evidence Act, as the trial is still ongoing and it is a continuous process where the court retains full authority to summon, recall or question a witness in the interest of truth. With respect to the objection that the witness would depose contrary to his statement under Section 161 Cr.P.C., learned counsel submits that the impugned order itself records that multiple versions of DD-16A exist, purportedly authored by the said witness, and therefore it is necessary that the inconsistencies be clarified so that the correct factual position may emerge.

8. It is further submitted that the complainant does not seek to conduct the examination personally, rather, it is open to the trial court to put the questions sought to be raised by the complainant in a manner it deems appropriate. As regards the contention that the Public Prosecutor has declined to examine the witness, learned counsel further submits that the Public Prosecutor has, in fact, expressed no objection before this Court as well as in the status report, and is willing to conduct the examination of the witness in accordance with law.

Analysis and Conclusion

9. Having considered the rival submissions and perused the record, it is evident that the impugned order dated 24.09.2024 permitting further examination of PW-8 on an application filed directly by the



complainant suffers from a fundamental procedural infirmity. While Section 311 Cr.P.C. empowers the Court to summon, recall or re-examine a witness if such evidence appears essential to the just decision of the case, the exercise of such power must be subject to established principles regulating the conduct of prosecution proceedings. In a State-led prosecution, the right to move such an application indisputably vests in the prosecution through the Public Prosecutor, and not in a private complainant unless duly authorised to conduct the trial.

10. In terms of Sections 301 and 302 of the Cr.P.C., a private party may only assist the Public Prosecutor and may conduct prosecution personally only with the leave of the Court. The Apex Court in ***Dhariwal Industries Ltd v. Kishore Wadhwani*** (2016)10 SCC 378, while clarifying that Section 302 CrPC permits private prosecution only before Magistrate's Courts, and such permission may be granted where it best serves the cause of justice, held as under:

“13. Having carefully perused both the decisions, we do not perceive any kind of anomaly either in the analysis or ultimate conclusion arrived at by the Court. We may note with profit that in Shiv Kumar [Shiv Kumar v. Hukam Chand, (1999) 7 SCC 467 : 1999 SCC (Cri) 1277], the Court was dealing with the ambit and sweep of Section 301 CrPC and in that context observed that Section 302 CrPC is intended only for the Magistrate's Court. In J.K. International [J.K. International v. State (Govt. of NCT of Delhi), (2001) 3 SCC 462 : 2001 SCC (Cri) 547] from the passage we have quoted hereinbefore it is evident that the Court has expressed the view that a private person can be permitted to conduct the



*prosecution in the Magistrate's Court and can engage a counsel to do the needful on his behalf. **The further observation therein is that when permission is sought to conduct the prosecution by a private person, it is open to the court to consider his request.** The Court has proceeded to state that the court has to form an opinion that cause of justice would be best subserved and it is better to grant such permission. And, it would generally grant such permission. Thus, there is no cleavage of opinion.”*

11. In the present case, the complainant has admittedly not sought nor obtained permission under Section 302(1) Cr.P.C. to conduct the trial. Consequently, any substantive application affecting the course of prosecution, particularly one invoking Section 311 Cr.P.C., cannot be entertained at the instance of the complainant directly.

12. The Supreme Court in ***Rekha Murarka*** (supra) has reiterated the paramount role of the Public Prosecutor and has cautioned against conferring unregulated control upon a private party in criminal trials. The relevant paragraphs read as under;

*“7. In our criminal justice system, the Public Prosecutor occupies a position of great importance. **Given that crimes are treated as a wrong against the society as a whole, his role in the administration of justice is crucial, as he is not just a representative of the aggrieved person, but that of the State at large.** Though he is appointed by the Government, he is not a servant of the Government or the investigating agency. He is an officer of the court and his primary duty is to assist the court in arriving at the truth by putting forth all the relevant material on behalf of the prosecution. While discharging these duties, he must act in a manner that is fair to the court, to the investigating agencies, as well to the accused. This means that in instances where he finds material*



indicating that the accused legitimately deserves a benefit during the trial, he must not conceal it. The space carved out for the Public Prosecutor is clearly that of an independent officer who secures the cause of justice and fair play in a criminal trial.

10. Contrary to the argument made by the learned Senior Counsel for Respondent 1, we do not find that the use of the words “under this sub-section” in the proviso to Section 24(8) implies that a victim's counsel can only be engaged to assist a Special Public Prosecutor. Such an interpretation would go against Section 301(2), which makes the pleader instructed by a private person subject to the directions of the Public Prosecutor or the Assistant Public Prosecutor. In our considered opinion, a harmonious reading should be given to these provisions to give them full effect. Furthermore, credence should be given to the overall emphasis on victimology underlying the 2009 Amendment Bill, as reflected in its Statement of Objects and Reasons:

“Statement of Objects and Reasons.—The need to amend the Code of Criminal Procedure, 1973 to ensure fair and speedy justice and to tone up the criminal justice system has been felt for quite some time. The Law Commission has undertaken a comprehensive review of the Code of Criminal Procedure in its 154th Report and its recommendations have been found very appropriate, particularly those relating to provisions concerning... victimology...”

2. ... At present, the victims are the worst sufferers in a crime and they don't have much role in the court proceedings. They need to be given certain rights and compensation, so that there is no distortion of the criminal justice system.”

In view of this context and the provisions of CrPC, there appears to be no justifiable basis for applying the provision only with respect to Special Public Prosecutors. Thus, we find that the assistance given by the victim's counsel is meant to be given to the prosecution in general.



11. In light of this, we now proceed to consider the extent to which such assistance can be accorded. As mentioned supra, the learned Senior Counsel for the appellant has argued that there may be instances where the Public Prosecutor may fail to perform his functions properly, whether deliberately or due to oversight, which may obstruct justice instead of furthering it. **To meet the ends of justice in such cases, he submitted that the role of the victim's counsel should not be limited to filing of written arguments as provided with respect to pleaders engaged by private parties under Section 301(2). Instead, it should extend to making oral arguments and examining witnesses as well.** On a perusal of the arguments advanced and the decisions relied on by both the parties, we find that such a broad mandate for the victim's counsel cannot be given effect to, as it is not rooted in the text of CrPC.

11.1. **The use of the term “assist” in the proviso to Section 24(8) is crucial, and implies that the victim's counsel is only intended to have a secondary role qua the Public Prosecutor.** This is supported by the fact that the original Amendment Bill to CrPC had used the words “coordinate with the prosecution”. However, a change was later proposed and in the finally adopted version, the words “coordinate with” were substituted by “assist”. This change is reflective of an intention to only assign a supportive role to the victim's counsel, which would also be in consonance with the limited role envisaged for pleaders instructed by private persons under Section 301(2). **In our considered opinion, a mandate that allows the victim's counsel to make oral arguments and cross-examine witnesses goes beyond a mere assistive role, and constitutes a parallel prosecution proceeding by itself. Given the primacy accorded to the Public Prosecutor in conducting a trial, as evident from Sections 225 and 301(2), permitting such a free hand would go against the scheme envisaged under CrPC.**

11.2. In some instances, such a wide array of functions may also have adverse consequences on the fairness of a trial. For instance, there may be a case where the Public Prosecutor



may make a strategic call to examine some witnesses and leave out others. If the victim's counsel insists upon examining any of the left-out witnesses, it is possible that the evidence so brought forth may weaken the prosecution case. **If given a free hand, in some instances, the trial may even end up becoming a vindictive battle between the victim's counsel and the accused, which may further impact the safeguards put in place for the accused in criminal trials.** These lapses may be aggravated by a lack of advocacy experience on the part of the victim's counsel. In contrast, such dangers would not arise in the case of a Public Prosecutor, who is required to have considerable experience in the practice of law, and act as an independent officer of the court. Thus, it is important to appreciate why the role of a victim's counsel is made subject to the instructions of the Public Prosecutor, who occupies a prime position by virtue of the increased responsibilities shouldered by him with respect to the conduct of a criminal trial.

11.3. At the same time, the realities of criminal prosecutions, as they are conducted today, cannot be ignored. There is no denying that Public Prosecutors are often overworked. In certain places, there may be a single Public Prosecutor conducting trials in over two-three courts. Thus, the possibility of them missing out on certain aspects of the case cannot be ignored or discounted. A victim-centric approach that allows for greater participation of the victim in the conduct of the trial can go a long way in plugging such gaps. To this extent, we agree with the submission made by the learned Senior Counsel for the appellant that the introduction of the proviso to Section 24(8) acts as a safety valve, inasmuch as the victim's counsel can make up for any oversights or deficiencies in the prosecution case. Further, to ensure that the right of appeal accorded to a victim under the proviso to Section 372 CrPC is not rendered meaningless due to the errors of the Public Prosecutor at the trial stage itself, we find that some significant role should be given to the victim's counsel while assisting the prosecution. **However,**



while doing so, the balance inherent in the scheme of CrPC should not be tampered with, and the prime role accorded to the Public Prosecutor should not be diluted.

11.4. In this regard, given that the modalities of each case are different, we find that the extent of assistance and the manner of giving it would depend on the facts and circumstances of each case. Though we cannot detail and discuss all possible scenarios that may arise during a criminal prosecution, we find that a victim's counsel should ordinarily not be given the right to make oral arguments or examine and cross-examine witnesses. As stated in Section 301(2), the private party's pleader is subject to the directions of the Public Prosecutor. In our considered opinion, the same principle should apply to the victim's counsel under the proviso to Section 24(8), as it adequately ensures that the interests of the victim are represented. If the victim's counsel feels that a certain aspect has gone unaddressed in the examination of the witnesses or the arguments advanced by the Public Prosecutor, he may route any questions or points through the Public Prosecutor himself. This would not only preserve the paramount position of the Public Prosecutor under the scheme of CrPC, but also ensure that there is no inconsistency between the case advanced by the Public Prosecutor and the victim's counsel.

11.5. However, even if there is a situation where the Public Prosecutor fails to highlight some issue of importance despite it having been suggested by the victim's counsel, the victim's counsel may still not be given the unbridled mantle of making oral arguments or examining witnesses. This is because in such cases, he still has a recourse by channelling his questions or arguments through the Judge first. For instance, if the victim's counsel finds that the Public Prosecutor has not examined a witness properly and not incorporated his suggestions either, he may bring certain questions to the notice of the court. If the Judge finds merit in them, he may take action accordingly by invoking his powers under Section 311 CrPC or Section 165 of the



Evidence Act, 1872. In this regard, we agree with the observations made by the Tripura High Court in Uma Saha v. State of Tripura [Uma Saha v. State of Tripura, 2014 SCC OnLine Tri 859] that the victim's counsel has a limited right of assisting the prosecution, which may extend to suggesting questions to the court or the prosecution, but not putting them by himself.”

13. The precedents further underscore that criminal proceedings cannot be allowed to assume the character of a personal contest. The question is, therefore, not whether the point sought to be raised by the complainant is relevant, but whether it is procedurally permissible for him to move such an application independently in a prosecution conducted by the State.

14. That said, the Court is conscious of the fact that the issue which the complainant seeks to place before the Court relating to the existence of multiple versions of DD No. 16A by PW-8 and the corresponding implications may have some bearing on the just adjudication of the matter. Indeed, the object of Section 311 Cr.P.C. is to empower the Court to ensure that no vital evidence is shut out and that the truth is brought before the Court. However, such power is to be invoked judiciously by the Court itself or through a request channelled via the Public Prosecutor, and not as an instrument for private intervention outside the statutory framework.

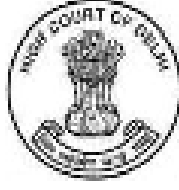
15. In a prosecution case, the parties before the Court are limited to the State (through the Public Prosecutor) and the accused. The



complainant, although an interested party, cannot be permitted to assume a role that effectively places him at par with the prosecuting authority. They can very well assist the prosecutor but cannot be given the power to examine and move arguments. Granting liberty to a complainant to file successive applications to re-open evidence without statutory sanction would convert the proceedings into a vindictive and potentially endless exercise, directly contrary to the principles of fair trial and finality of proceedings.

16. The impugned order, in proceeding on an application not maintainable at the instance of the complainant, disregards these binding legal postulates. The reasoning that the trial court was merely exercising its power under Section 311 Cr.P.C. is untenable, as the application was not initiated by the prosecution and no formal request was made through the Public Prosecutor. The trial court failed to consider that its power under Section 311 Cr.P.C. must be exercised *suo motu* or upon a request by a party competent to make such request. In view of the above settled law, the Madhya Pradesh High Court in ***Shubham Sharma v. The State of MP and ors.*** Misc. Petition no. 2554/2025 dismissed a petition filed by the complainant therein, who sought to examine a witness vide application under section 311 CRPC without routing through the prosecutor.

17. Accordingly, while this Court holds that the questions raised by the complainant may, if deemed relevant, be taken up through Public



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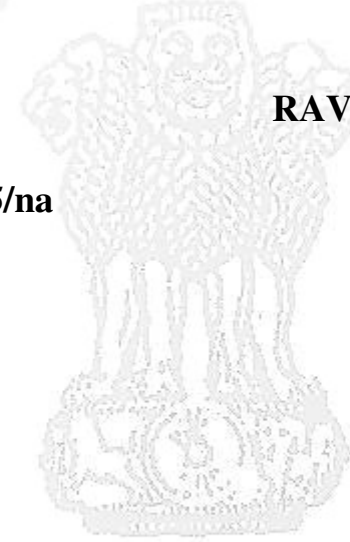


Prosecutor or by the Court on its own motion under Section 311 Cr.P.C. However, the application under Section 311 Cr.P.C. filed directly by the complainant could not have been considered. The present petition is therefore allowed and the impugned order dated 24.09.2024 is therefore set aside.

18. The petition accordingly stands disposed of.

RAVINDER DUDEJA, J.

DECEMBER 19, 2025/na



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