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

+ **CRL.REV.P. 380/2025 & CRL.M.A. 28658/2025**

RAM PRAVESH

.....Petitioner

Through: Counsel (appearance not given)

versus

THE STATE GOVT OF NCT OF DELHI

.....Respondent

Through: Mr. Nawal Kishore Jha, APP for the State along with WSI Sunil.
Mr Dhan Mohan (Amicus Curie), Ms Tanisha Bhatia, Ms Anjali Chaudhary and Mr Mohit Gupta, Advs. for the complainant.

CORAM:

HON'BLE DR. JUSTICE SWARANA KANTA SHARMA

ORDER

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19.12.2025

1. By way of the present petition, the petitioner seeks the following reliefs:

“a) Call for the Trial Court Record

b) Set aside the order dated 23.05.2025 of case No. SC/518/2019 passed by Ms Ankita Lal, Ld. ASJ, Saket Courts, New Delhi in case FIR No. 319/2019, U/s 354 IPC and 10 POCSO Act, P.S. Okhla Industrial Area whereby the Ld ASJ has been pleased to dismissed order on recalling the Pw-6 IO Shanti Barla and PW-7 SI Malkhan Singh under section 348 of BNSS IPC against the petitioner.

b) Allow the application of the Petitioner for recalling the witnesses PW-6 JO Shanti Birla and PW-7 SI Malkhan Singh for cross examination.”

2. By way of the impugned order, the learned Trial Court had dismissed the application of the petitioner for recalling PW-6 and PW-7 on the ground that the powers vested with the learned Trial Court under the provisions of



Section 311 of the Code of Criminal Procedure, 1973 (hereafter 'Cr.P.C.') are discretionary and have to be exercised judiciously and not arbitrarily.

3. The learned counsel appearing for the petitioner submits that on 28.09.2024, when the matter was listed before the learned Trial Court for examination of a public witness, PW-6 IO WSI Shanti Barla appeared for her testimony. On that date, the learned proxy counsel appeared on behalf of the petitioner and sought an adjournment on the ground that the main counsel was out of town. Although the said submission was duly recorded, the learned Trial Court proceeded to record the examination-in-chief of PW-6 and noted the cross-examination as “*NIL opportunity given,*” thereafter discharging the witness. It is further submitted that on 10.12.2024, when PW-7 SI Malkhan Singh appeared for his examination, the learned proxy counsel again appeared on behalf of the petitioner and sought an adjournment on the ground that the main counsel was unavailable due to having met with an accident. In support of the said submission, medical documents pertaining to the main counsel were placed on record. Despite this, the learned Trial Court recorded the examination-in-chief of PW-7, noted the cross-examination as “*NIL opportunity given,*” and discharged the witness. It is argued that the non-appearance of the main counsel for the petitioner on both the aforesaid dates was solely on account of medical exigency and was neither intentional nor deliberate. It is, therefore, prayed that the impugned order be set aside and the petitioner be permitted to recall the aforesaid witnesses in the interest of justice and to ensure a fair trial.

4. The learned APP for the State, who is assisted by the counsel for the complainant, on the other hand, opposes the prayer made in the present petition. It is argued that the present petition filed by the petitioner herein is



a tactic to delay the trial. It is further argued that PW-6 and PW-7 were examined in the presence of the proxy counsel. Therefore, it is prayed that the petition herein be dismissed.

5. This Court has **heard** the arguments of the learned counsel appearing for the petitioner as well as the learned APP for the State, who is assisted by the learned counsel for the complainant, and has perused the material available on record.

6. This Court notes that on 28.09.2024, when PW-6 IO WSI Shanti Barla was to be examined, the proxy counsel for the petitioner informed the Court that the main counsel for the petitioner was not available. Nevertheless, the chief examination of PW-6 was conducted, and with respect to cross-examination, it was recorded as *“Nil opportunity given as no main counsel for the accused has appeared.”*

7. Further, on 10.12.2024, when PW-7 SI Malkhan Singh was to be examined, the proxy counsel for the petitioner again submitted that the main counsel had met with an accident and placed the medical documents of the main counsel on record. On that date as well, the trial court proceeded with the chief examination of the witness and again recorded *“Nil opportunity given”* for cross-examination. This Court further notes that the presence of the proxy counsel is duly reflected in the order sheets for the dates on which the examinations were conducted.

8. Upon perusal of the medical records of the counsel for the petitioner it is clear that the learned counsel for the petitioner was admitted to hospital on 24.11.2024 and was discharged on 28.11.2024 and was diagnosed with:

- “1) Left Femur Mid-Shaft Segmental Fracture*
- 2) Left Proximal Tibia Bicondylar Fracture*



3) C4C7 posterior element fracture (Undisplaced)

4) 7th rib undisplaced fracture left side”

9. It is well settled that cross-examination is a vital and indispensable right of the defence to elicit the true version of facts and circumstances, and denial thereof results in serious prejudice and leads to injustice.

10. Therefore, considering the fact that the learned counsel for the petitioner was having a fracture at the time when the PW-7 was being examined and the fact that the adjournment was not sought with malafide intention or deliberately, this court is inclined to grant permission to the petitioner to recall PW-6 IO WSI Shanti Barla and PW-7 SI Malkhan Singh for cross-examination before the learned Trial Court. However, it is made clear that both the aforesaid witness will be cross-examined on behalf of the petitioner on a single date, to be fixed by the learned Trial Court. It is also made clear that no unnecessary adjournment will be sought by either of the parties on that date.

11. With these directions, the petition stands disposed of. Pending application, if any, also stands disposed of.

12. The order be uploaded on the website forthwith.

DR. SWARANA KANTA SHARMA, J

DECEMBER 19, 2025/A/RB