



2025:DHC:9393



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

% ***Date of decision: 13th October, 2025***

+ **CRL.M.C. 7233/2025, CRL.M.A. 30362/2025 & 30363/2025 (stay)**

STATE OF NCT OF DELHI

.....Petitioner

Through: Mr. Madhukar Pandey, SPP with Mr.
Sulabh Gupta and Mr. Daksh
Sachdeva, Advocates.

versus

1. MOHD. TAHIR HUSSAIN
S/o Md. Kallan SaifiRespondent No.1
2. ANAS
S/o IdrishRespondent No.2
3. FIROZ
S/o BabuddinRespondent No. 3
4. JAVED
S/o Jafruddin ...Respondent No. 4
5. GULFAM
S/o Ramjani ...Respondent No. 5
6. SHOAIB ALAM @ BOBBY
S/o Mustafa Hussain ...Respondent No. 6
Through: Mr. Rajiv Mohan, Ms. Tara Narula
and Ms. Sonal Sarda, Advs. for R-1.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

1. Petition under Section 528 Bharatiya Nagarik Suraksha Sanhita, 2023



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(“**BNSS**”) has been filed on behalf of the Petitioner for setting aside Order dated 07.02.2025 passed by learned ASJ-03, North-East District, Karkardooma Courts in SC No.168/2020, whereby the Application for recall of PW-23 under Section 348 B.N.S.S., was dismissed.

2. Learned counsel for Respondent No.1 appears on advance Notice.
3. It is submitted in the Petition that on 24.02.2020, violent riots erupted in North-East Delhi, pursuant to the protests against CAA-NRC. Multiple calls were received by Police regarding violence and riotous activity. Few calls were also made by accused Tahir Hussain and the same were marked to SI Shiv Charan, who along with Ct. Ankit, Ct. Nikesh and ASI Hira Lal went to the house of accused Tahir Hussain at around 11:30 PM - 12:00 AM, on the intervening night of 24-25.02.2020.
4. On 25.02.2020, at around 04-05:00 PM, godown of Aman e-rickshaw of Harsh Trading Unit at E-17, Khajuri Khas, Main Karawal Nagar Road, Chand Bagh Puliya, Delhi was looted, vandalized and set ablaze by a riotous mob of Muslim people, after being instigated by the accused. On 27.02.2020, a Complaint was made by Mr. Karan at PS: Khajuri Khas and FIR No.114/2020 was registered. The case was transferred to SIT, Crime Branch, Delhi and investigation was marked to SI Mukesh Tyagi.
5. On 19.06.2020, *first Chargesheet* was filed against six accused persons under various Sections of IPC and the case was committed by the learned Sessions Court for trial. On 07.02.2023, **Charges** under Sections 153A/147/148/427/435/436/395/120B/188 read with Section 147 IPC were framed against those six accused persons and the matter was listed for prosecution evidence.
6. On 28.01.2025, Prosecution examined PW-23, *Inspector Shiv Charan*



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Meena, who stated that on 24.02.2020 at around 11:30 PM - 12:00 AM, he along with Ct. Ankit, Ct. Nikesh and ASI Hira Lal had gone to the house of accused Tahir Hussain to enquire regarding the calls made by him and he found that Aman e-rickshaw was burnt and its shutter was also broken.

7. Thereafter, on 04.02.2025, prosecution examined *PW-26, HC Ankit Malik*, who deposed that on 24.02.2020 at around 11:30 PM - 12:00 AM midnight, he had accompanied SI Shiv Charan to the house of accused Tahir Hussain and found that showroom of e-rickshaw of Harsh Trading was in normal condition. He also deposed that when he was on patrolling duty on 25.02.2020 at around 10:00 – 11:00 PM, he saw the aforesaid showroom of e-rickshaw of Harsh Trading was in burnt condition.

8. On 07.02.2025, the Prosecution filed an Application under Section 348 B.N.S.S. for recalling PW-23, Inspector Shiv Charan Meena in view of testimony of PW-26, Ct. Ankit before the learned Trial Court, but the same was rejected *vide* impugned Order dated 07.02.2025.

9. It is submitted in the Petition that Prosecution intended to recall PW-23 in Order to find out the truth about the condition of Aman e-rickshaw Showroom in the intervening night of 24-25.02.2020, in view of deposition of PW-26, Ct. Ankit, who had accompanied PW-23, Inspector Shiv Charan Meena on that day. It was never pleaded before the learned Trial Court that the prosecution intended to obtain a fresh statement in respect of the aforesaid facts from PW-23.

10. Various witnesses, including public and official witnesses have deposed before the learned Trial Court with respect to the date and time of incident in the captioned case and *have stated that Aman e-rickshaw was set ablaze by riotous mob on 25.02.2020 between 04:00-05:00 PM.*



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11. Witnesses, namely, PW-1 HC Rahul, PW-2 HC Praveen Kumar, PW-14 Vikalp Kochar, PW-15 Akash, PW-17 Bharat, PW-18 Karan, PW-19 Pradeep Verma, PW-22 Saurabh Sharma, PW-24 Roshan Kumar and PW-26 HC Ankit Malik have been detailed, wherein all of them have given the date of incident as 25.02.2020.

12. It is submitted that it is a well-settled law that the testimony of one single witness, if it inspires confidence, can be relied upon by the learned Trial Court to convict the accused persons. In the present case, the fact in question is the date of incident, for which the threshold is much lower. Irrespective of the same, there are 10 other witnesses, who support the case of the prosecution. It is not a case where the prosecution intends to fill the lacunae in the present facts, as 10 witness apart from PW-23, have deposed that the incident happened on 25.02.2020.

13. Learned Trial Court has refused to acknowledge the possibility of PW-23 making an error during his evidence, as recognized by the adage “*to err is human*”, thereby bringing to fore the possibility of erring about a particular fact during the evidence. Such fact ought to be put to the witness so that the truth must be brought to the fore, by recalling him for examination.

14. The impugned Order is against the settled law as pronounced by the Hon’ble Supreme Court in various Judgments, as has also been relied by the prosecution during the proceedings. It has not been appreciated that PW-26, who accompanied PW-23 deposed and gave the same version of facts, where the time remained the same, but the date of seeing Aman e-rickshaw Showroom burnt was different by one day. The Petition has been filed *bona fide* and no prejudice shall be caused to the accused persons.

15. Reliance is placed on Rajendra Prasad vs. Narcotics Cell, (1996) 6



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SCC 110.

16. ***Learned counsel for the Petitioner*** has submitted that there is only a small clarification about the date which is required to be clarified from PW-23, which shall not prejudice the defence of the accused persons and therefore, an opportunity may be given to the prosecution to declare PW-23 hostile on this aspect and be further examined in regard to the date of incident.

17. **Learned counsel for Respondent No.1** submits that impugned Order is well-reasoned and does not merit any interference. The statement of PW-23 Inspector Shiv Charan Meena under Section 161 Cr.P.C. was already available with the prosecution and in case, if it was found any discrepancy about the date on which Aman e-rickshaw Showroom was seen burnt, there was nothing which prevented the prosecutor from confronting the witness on the same day. There is no ground to state that this discrepancy has been noted only after recording of statement of PW-26. In fact, the Petitioner himself has stated that there are as many as 10 witnesses, who have given date of incident as 25.02.2020.

18. It is further submitted that the entire prosecution evidence stands concluded, after which the statement of accused persons under S.313 Cr. P. C. have been recorded and they have also led the evidence in defence.

19. The matter was listed for final arguments on 09.10.2025 and thereafter, is now listed for 27.10.2025. The impugned Order is of 07.02.2025, after which much trial has already proceeded.

20. There are no genuine reasons for seeking recall of PW-23. The Order of learned ASJ does not suffer any infirmity and the Petition is liable to be dismissed.

Submissions heard and record perused



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21. The Chargesheet had been filed against the Respondent and others in regard to violence and riots activities, which took place on 24-25/02.2020 in the protest against CAA/NRC. According to the Prosecution, the Police had visited the area on 24.02.2020. It was the specific case that on the next date, i.e. 25.02.2020, the mob had caused damage to various properties and also to the shop in the name of Harsh Trading wherein an e-rickshaw was sold in the name of Aman e-rickshaw.

22. The Prosecution has examined as many as 10 Prosecution witnesses to corroborate the charges. The testimony of all the 10 Prosecution witnesses has been placed on record, the perusal of which shows that they all except PW-23, deposed that the shop of Harsh Trading was vandalized on 25.02.2020. However, PW-23 in his deposition, had stated that on 24.02.2020 at about 11:00 PM on the directions of the SHO, he alongwith Ct. Ankit Malik, Ct. Nikesh and ASI Hira Lal, had gone to the house of Tahir Hussain at about 11:30 PM to make an enquiry. *“While visiting house of Tahir Hussain, I had seen one shop situated between Chand Bagh puliaand house of Tahir Hussain, in the name of Harsh Trading, wherein E-rickshaw was sold in the name of Aman Rickshaw. I found that shop in burnt condition. Shutter of that shop was also in broken condition.”*

23. Further, PW-26 HC Ankit, deposed that he had accompanied PW-23 SI Shiv Charan Meena and during the visit, they found a showroom in a normal condition and that it was vandalised on the next date i.e. 25.02.2020, by the Accused and other persons.

24. The main ground on which recalling of PW-23 SI Shiv Charan Meena is sought is in light of the testimony of PW-26, who has deposed otherwise.

25. Essentially, the grievance of the Petitioner is that there is a



contradiction in this testimony of PW-23 with which he needs to be confronted and a re-examination/cross-examination is required in the interest of justice, for correct decision in the present case.

26. The ***first aspect*** that needs to be highlighted is that the testimony of PW-26 cannot be a basis for recalling PW-23. The purpose of recording the witnesses is to depose about the case of the Prosecution and to bring out the truth by way of cross-examination.

27. It was the case of the Prosecution that vandalization of Harsh Trading had taken place on 25.02.2020. The statement of PW-23 under Section 161 Cr.P.C. was available. In addition, it has been a consistent case of the Prosecution, as has been deposed by other witnesses, namely, PW-1 and others that the mob had vandalized some shops on 25.02.2020. It is not as if that this fact came to the knowledge of the Prosecution for the first time from the testimony of PW-26. The law does not recognize confrontation of the testimony of one witness with the testimony of another witness. Whatever are the contradictions, are a matter of interpretation at the time of the final judgment and cannot be a basis for recalling PW-23.

28. Secondly, in the case of UT of Dadra and Nagar Haveli and Anr. v. Fatehsinh Mohansinh Chauhan, (2006) 7 SCC 529, it has been observed that the principle governing the exercise of power under Section 311 Cr.P.C. is well-settled that it should be resorted to only for the object of finding out the truth or obtaining proper proof of any facts which lead to a just and correct decision of the case. This being the primary duty of a Criminal Court, calling or recalling a witness already examined for the purpose of finding out the truth in order to enable the Court to arrive at a just decision of the case, cannot be dubbed as filling lacuna in Prosecution's case unless the facts and



circumstances of the case make it apparent that the exercise of power by the Court would result in causing serious prejudice to the Accused resulting in miscarriage of justice.

29. In the case of Rajendra Prasad v. Narcotics Cell, 1996 56 SCC 110, it was observed by the Apex Court that *lacuna in the Prosecution* case is not to be equated with the fallout of an oversight committed by a Public Prosecution during trial, either in producing relevant material or in eliciting relevant answers from witnesses. A corollary of any such laches or mistakes during the conduct of the case, cannot be understood as a lacuna which a Court cannot fill up.

30. As has been already noted above, there were about 10 witnesses, who have been examined about the facts involved in the present case. Even if one witness, i.e., PW-23, had stated that the shop was noticed by him to be burnt on the night of 24.02.2020, it is a question of interpretation of the evidence as led by all the witnesses and it is not a case where the Prosecution can be permitted to recall a witness only for the purpose of confrontation on a point which was well within the knowledge of the Prosecution on the day i.e., 28.02.2025 when the testimony of PW-23 was examined. The purpose for recall of PW-23, does not fall in the scope of S.311 Cr.P.C.

31. It is also pertinent to observe that the statement of PW-26 was recorded on 04.02.2025. Thereafter, on conclusion of the Prosecution evidence, the statement of the Accused persons under Section 313 Cr.P.C. were recorded and the matter was listed at the stage of final arguments. It is thereafter, that the Application under Section 348 BNSS has been filed for recall of PW-23.

32. In light of the above observations, there is no infirmity in the Impugned Order dated 07.02.2025 whereby the learned ASJ has declined to summon



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PW-23 for further cross-examination.

33. The Petition alongwith pending Applications, if any, is accordingly dismissed.

(NEENA BANSAL KRISHNA)
JUDGE

OCTOBER 13, 2025/R/N