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

+ CRL.M.C. 7706/2025, CRL.M.A. 32224-32225/2025

BABLU

.....Petitioner

Through: Mr. Asim Ali, Mr. Md. Junaid Khan
and Mr. Sehrish, Advocates.

versus

STATE OF NCT OF DELHI

.....Respondent

Through: Mr. Hitesh Vali, APP for State with
SI Rekha Chauhan, PS-Pandan Nagar.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

03.11.2025

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1. The present petition is directed against order dated 11th September, 2025 passed by the ASJ (SC-POCSO), East District, in Sessions Case No. 3608/2019, titled "***State v. Bablu***". These proceedings emanate from FIR No. 250/2019, registered at P.S. Pandav Nagar for the offences under Sections 376/506 of the Indian Penal Code, 1860¹ and Sections 5(p), 5(l) and 6 of the Protection of Children from Sexual Offences Act, 2012.

2. The examination-in-chief of the victim was partly recorded in 2019 and then in 2021; cross-examination was concluded in 2021. Four years later, when the matter was posted for final arguments, the Petitioner filed an application under Section 311 of the Code of Criminal Procedure, 1973²

¹ "IPC"

² "Cr.P.C"



(now Section 348 of the Bharatiya Nagarik Suraksha Sanhita, 2023³), seeking recall of PW-1 (the victim) for further cross-examination, on the ground that the earlier defence counsel allegedly omitted to ask certain material questions.

3. The Trial Court has rejected the Petitioner's application observing that since PW-1 had already been extensively cross-examined in the year 2021, recalling her at the stage of final arguments, merely on the ground of change of defence counsel, would not only be unwarranted, but could also potentially re-traumatize the victim. The Trial Court also noted that the application did not disclose any specific questions that the defence intended to put to the witness, nor did it demonstrate any compelling reason for why such questions could not have been asked earlier. For ease of reference, the impugned order is extracted hereinunder:

"Today, matter is fixed for final arguments. However, Ld. defence Counsel submits that accused has moved an application under Section 348 BNSS (311 of Cr.P.C.) for recalling of PW-1 (victim) for further examination as previous defence Counsel of accused omitted to ask some necessary questions during cross-examination of the victim. He further submits that due to such omission of any Counsel, accused should not suffer as he has right to fair trial. He also argued that this Court has wide powers under Section 311 Cr.P.C. to recall any witness at any stage during trial. Finally, he prays for allowing the said application of accused with assurance that he will cross-examine victim on a single day as may be directed by the Court.

On the other hand, Ld. Chief PP for the state opposed the aforesaid application of the accused on the ground that previous defence counsel of accused had extensively cross-examined the victim on 23.03.2021 and now, victim should not be recalled at the sweet will of the accused at this belated stage merely on the ground that he has changed his Counsel. He also pointed out that recalling victim in this case may re-traumatize her and power under Section 311 of Cr.P.C. should be used sparingly and judiciously.

I have considered rival submissions of both sides on the application of the defence for recalling victim/PW-1. The victim (PW-1), who sought to

³ "BNSS"



be recalled by the defence, had already been extensively cross-examined by then defence Counsel in the year 2021 and now, at the stage of final arguments and with change of Ld. defence Counsel, accused again seeks further opportunity to cross-examine her. Recalling minor victim of sexual crime may be equal to revisiting of trauma by her and therefore, such victim should not be recalled merely on the asking of accused. Accused has not made out any specific case as to what had prevented him in putting other relevant questions during cross-examination of victim in the year 2021. Further, in the application under Section 311 Cr.P.C., the defence has not elaborated any specific query, which it proposed to ask from PW-1. Accordingly, this Court does not see any legal justification in conceding the request of accused for recalling victim for further cross-examination in the instant case. Resultantly, said application of the accused under Section 311 Cr.P.C. is disallowed as being devoid of any merit.

Copy of the order be given dasti to Ld. Counsel for the accused as prayed for.

Put up for final arguments on 08.10.2025. Ld. Counsel for the accused is directed to file short written synopsis at least 04 days prior to the next date of hearing."

4. The Court has considered the submissions advanced by the Petitioner. There is no dispute that the power under Section 348 BNSS/Section 311 Cr.P.C. is wide and discretionary and empowers the Court to summon, recall, or re-examine any witness if such evidence appears essential to the just decision of the case. However, the power is not unbridled, and must be exercised with caution, circumspection, and only when the Court is satisfied that non-recall would lead to failure of justice. The Supreme Court has consistently held that Section 311 cannot be invoked to simply fill up perceived gaps or to bolster a party's case belatedly.⁴

5. Having now engaged a different counsel, the Petitioner contends that certain questions which the earlier counsel did not put to the victim, are necessary for the defence; and therefore, victim be recalled. However, it is well-settled that when an accused has chosen counsel of his own volition,

⁴ Rajaram Prasad Yadav vs State of Bihar, (2013) 14 SCC 461.



the subsequent change of strategy due to change of counsel cannot, by itself, constitute a valid ground to recall a witness.⁵ To accept such a reasoning would open the floodgates for repeated recall applications, thereby undermining finality of criminal trials and exposing victims to repeated and avoidable trauma. In *State (NCT of Delhi) v. Shiv Kumar Yadav*,⁶ while dealing with recall of a prosecutrix in a sexual offence case, the Court held that a mere change of counsel or dissatisfaction with earlier cross-examination cannot justify recall, particularly where such recall risks subjecting the victim to secondary trauma. Permitting recall in such circumstances would encourage endless re-trials, driven only by shifts in defence strategy.

6. In the present case, the Petitioner has not demonstrated any specific prejudice, nor pointed to any particular circumstance that prevented the earlier counsel from asking the alleged omitted questions. The request is vague, belated, and tactical, rather than based on genuine necessity. Allowing such recall at the stage of final arguments, after four years, would not only undermine finality in criminal trial proceedings but would also expose the minor victim to avoidable re-traumatization, contrary to the legislative intent underlying the POCSO Act.

7. In view of the foregoing discussion and the legal principles settled by the Supreme Court, this Court finds no perversity, illegality or error in the impugned order warranting interference.

⁵ See: *State of Haryana vs Ram Mehar*, (2016) 8 SCC 136.

⁶ *State (NCT of Delhi) v. Shiv Kumar Yadav*, (2016) 2 SCC 402.



8. Accordingly, the petition is dismissed, along with pending applications.

SANJEEV NARULA, J

NOVEMBER 3, 2025

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