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

+ CRL.M.C. 8264/2025, CRL.M.A. 34455/2025 (stay)

SHANKAR @ GORI SHANKAR

.....Petitioner

Through: Mr. Rajat Wadhwa, Adv, Mr. Gurpreet Singh, Adv, Mr. Sahil Kakkar and Ms. Anshika Juneja, Advocates.

versus

STATE NCT OF DELHI AND ANR

.....Respondents

Through: Ms. Kiran Bairwa, APP for the State.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER

20.11.2025

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CRL.M.A. 34456/2025 (Exemption)

1. Exemption allowed, subject to all just exceptions.
2. The Application stands disposed of.

CRL.M.C. 8264/2025

3. Petition under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.PC')/Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, has been filed on behalf of the Petitioner/Accused, to challenge the Order dated 12.11.2025 of learned ASJ-07, New Delhi District, Patiala House Courts, New Delhi in SC No. 8530/2016 arising out of FIR No. 119/2003 registered at Police Station Inder Puri whereby the Application under Section 311 CrPC filed by the State, has been allowed.
4. On advance notice, learned Prosecutor has appeared on behalf of the State.



5. Briefly state, an Application under Section 311 CrPC, was filed on behalf of the State seeking permission for re-examination of PW-11, Ct. Brijesh Kumar and for examination of ASI, Phool Singh, Duty Officer. The Application was allowed *vide* Impugned Order dated 12.11.2025, which is challenged by the Petitioner/Accused, who has submitted that this case is lingering since 2003. The entire Prosecution evidence was recorded by the learned Metropolitan Magistrate, after which the Complainant had moved an Application for framing of Charge under Section 307 of the Indian Penal Code, 1860 (*hereinafter referred to as 'IPC'*), though, the learned Metropolitan Magistrate declined to amend the Charge.

6. A **Revision Petition** was preferred wherein the learned ASJ had directed the framing of Charge under Section 307 IPC. The matter was then committed to the Court of Sessions and the entire Prosecution evidence was recorded afresh.

7. Now, this Application under Section 311 CrPC, has been filed for recall of PW-11 and for examination of ASI, Phool Singh, Duty Officer. It is submitted that the recall of PW-11, Ct. Brijesh Kumar, whose testimony was recorded on 29.11.2016, is sought to prove the certain documents that were prepared by learned ASI Rajinder Singh, IO. It is stated that the Investigating Officer had died before his evidence could be recorded and some documents are required to be proved by Ct. Brijesh Kumar, to recognize the handwriting of ASI, Rajinder Singh.

8. The Impugned Order dated 12.11.2025 is **challenged on the grounds** that it suffers from complete misappreciation of the fact. ASI Rajinder Singh had expired on 09.07.2003 i.e., soon after the registration of FIR on 17.06.2003. The testimony of Ct. Brijesh Kumar was recorded on



29.11.2016 and therefore, the ground on which recall of PW-11, Ct. Brjiesh Kumar is sought, is not made out. The evidence of the Prosecution was closed after recording of entire evidence on 01.02.2025 and there is no ground for recall of the witnesses.

9. It is further submitted that ASI, Phool Singh was never cited as a witness by the Prosecution and suddenly, after the entire Prosecution stands concluded, the FIR, which got registered in 2003 is sought to be proved by calling ASI Phool Singh, the Duty Officer. The Impugned Order does not satisfy the mandatory test of “essentiality”, “necessity” and “interest of justice”, which are required for allowing any Application under Section 311 Cr.PC. A prayer is, therefore, made that the Impugned Order may be set-aside.

10. **Learned counsel for the Petitioner** submits that the objective of examining ASI Phool Singh is to prove the FIR. Ct. Brijesh Kumar apparently is sought to be recalled for proving the rukka, recorded on the Complaint, on which the FIR was registered. He has further submitted that the Petitioner admits the FIR, which may be exhibited and this takes care of the witnesses, which are sought to be examined by the Prosecution.

11. **Learned Prosecutor on behalf of the State**, submits that the rukka is an important document, which needs to be proved by Ct. Brijesh Kumar, who can identify the handwriting of IO/ASI Rajinder Singh.

Submissions heard and the record perused.

12. Essentially, the two witnesses namely, Ct. Brijesh Kumar is sought to be recalled and ASI Phool Singh to be examined, only for the purpose of proving the FIR. Since the learned counsel for the Petitioner, is not objecting and admitting the FIR, which is exhibited as P-1, the Application of the



Prosecution, becomes infructuous. It is, however, clarified that though, the FIR has been admitted, but whatever the challenge may be to the contents therein, the Petitioner would be at liberty to address their submissions on the contents of the FIR or the Complaint or the *rukka*.

13. With these observations, the Petition is hereby disposed of accordingly. Pending Application, if any, also stands disposed of.

NEENA BANSAL KRISHNA, J

NOVEMBER 20, 2025/RS