



\$~67

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

+ **CRL.M.C. 8797/2025 & CRL.M.A. 36672/2025,**
CRL.M.A. 36745/2025

MD ABID

.....Petitioner

Through: Mr. Vikas Kakkar, Mr.
Abhishek Baghel Mr.
Sanskar Nagaich & Mr.
Dilip Kumar Rana, Advs.

versus

STATE OF NCT OF DELHI

.....Respondent

Through: Mr. Ritesh Kumar Bahri,
APP for the State along
with Mr. Vinesh Kumar,
Adv.
SI Ravi Yadav, PS
Govindpuri.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

%

09.12.2025

1. The present petition is filed challenging order dated 09.10.2025, passed by the learned Court of Sessions dismissing the petitioner's application filed under Section 311 of the Code of Criminal Procedure, 1973 ('CrPC') for recall of PW-1.
2. The learned Court of Sessions dismissed the application filed by the petitioner noting that evidence of PW-1 was recorded on 18.07.2025 and the counsel for the accused was not available on that day.
3. The learned Court of Sessions noted that the counsel for the accused being busy in another Court is not a genuine ground for recall of the victim. The learned Court of Sessions thereafter listed the matter for evidence of mother of the victim on

CRL.M.C. 8797/2025

Page 1 of 3



11.12.2025.

4. The learned counsel for the petitioner submits that the right of the petitioner accused to cross examine PW1 was closed by order dated 18.07.2025. He submits that accused was present in the Court and on that day and the learned counsel, who was representing the accused, at the time when the matter was called by the learned Court of Sessions, was arguing in another Court. He submits that the accused instead of seeking pass over, told the Court that his counsel is busy in other Court, which led the learned Court of Sessions closing the petitioner's opportunity to cross examine the PW1.

5. He submits that the learned Court of Sessions also fell in error in noting that the petitioner had sought recall of victim for cross examination. He submits that PW1 is not the victim and she is mother of the victim and the learned Court of Sessions itself has listed the matter for evidence of victim's mother on 11.12.2025. He submits that the matter is now listed before the learned Court of Sessions on 11.12.2025 for the examination of PW1 again. However, it was erroneously noted that the evidence of PW1 is closed in order dated 18.07.2025.

6. The record indicates that PW1 is the mother of the victim, however, was inadvertently recorded by the learned Court of Sessions to be victim herself.

7. Undisputedly, the learned Court of Sessions by order dated 09.10.2025 has now listed the matter on 11.12.2025 for evidence of mother of victim, that is, PW1.

8. Therefore, in the opinion of this Court, no prejudice would be caused to any of the parties, if the petitioner is permitted to



cross examine the PW1 on 11.12.2025. Even otherwise, the application for recall was filed promptly without any delay. The accused's right to fair trial ought not to be curtailed on non-appearance of his counsel on one date.

9. In view of the above, the present petition is allowed. The impugned order is set aside to the extent that the petitioner is permitted to cross examine the PW1 on 11.12.2025 or any other convenient date that may be fixed by the learned Court of Sessions.

10. Pending applications also stand disposed of.

AMIT MAHAJAN, J

DECEMBER 9, 2025

"SK"