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

% ***Date of Decision: 7th February, 2026***

+ CRL.M.C. 469/2026 & CRL.M.A. 1875/2026 & CRL.M.A. 1876/2026
RAJESH AND ORSPetitioner

Through: Mr. Girish Gupta with Ms. Sidhi
Sharma, Advocates.

versus

STATE GOVT. OF NCT OF DELHI AND ANR.Respondent

Through: Mr. Raj Kumar, APP with SI Sunil
Chauhan.

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

JUDGMENT (oral)

1. Petitioners seek quashing of order dated 10.11.2025 whereby their request to recall prosecutrix for further cross-examination has not been acceded to.
2. The alleged incident took place on 04.08.2023 and after comprehensive investigation and arrest of the accused persons, charge-sheet was filed on 19.09.2023.
3. Since it was a case of sexual assault upon a child and, *inter alia*, involving Section 10 of *Protection of Children from Sexual Offences (POCSO) Act, 2012* the case was committed to Court of Sessions.
4. Prosecutrix (PW-1) entered into witness box on 05.02.2024 and same day, her *examination-in-chief* was recorded. Her cross examination was deferred for 14.03.2024.



5. On 14.03.2024, the then learned defence counsel cross-examined her at length on behalf of all the accused persons. During course of the arguments today, copy of her deposition was shown which indicates that such cross-examination of prosecutrix was exhaustive and elaborate one, running into more than 12 pages.

6. Thereafter, there was change in counsel and the new counsel filed his *vakalatnama* in the year 2024 itself and cross-examination of the other witnesses was conducted by such new counsel only.

7. An application was filed before the learned Trial Court under Section 348 BNSS (corresponding Section 311 Cr.P.C.) with prayer to recall prosecutrix for further cross-examination and the grievance in the present petition is with respect to the dismissal of such application.

8. According to learned counsel for petitioner, though there was, earlier, detailed cross-examination conducted by the then defence counsel, certain material and relevant question(s), which go to the root of the matter and which are essential for just and fair adjudication of the matter, were not put to the victim and, since the trial is, still, going on, no prejudice would be caused to anyone if PW-1 is directed to be recalled for further cross-examination. It is also stated that such cross-examination would not last for more than five minutes. Though, in the present petition, it has not been elucidated and elaborated as to what were those crucial question(s) which were essential for just decision and which could not be put, it was, verbally, apprised that there would be few questions and suggestions, concerning the presence of the brother of the prosecutrix.



9. Undoubtedly, the power given in under Section 348 BNSS is wide enough and the Court can always direct examination or recall of any witness, if the evidence of such witness appears to be essential to the just decision of the case.

10. However, at the same time, such discretionary power has to be exercised with requisite caution and judicial restraint, and not in an arbitrary and mechanical manner.

11. The *examination-in-chief* of the prosecutrix, who is alleged to be victim of sexual assault at the hands of multiple persons, would indicate that when her statement was being recorded, she broke-down several times and started weeping in middle of her statement, while narrating the incident. She was duly counseled by her support-person and, therefore, she was able to regain her calm and composure and was able to conclude her *examination-in-chief* on 05.02.2024.

12. On 14.03.2024, she was cross-examined at length by her defence counsel and her cross, which started in pre-lunch session spread over post-lunch also. Evidently, during such cross-examination, some questions were disallowed, being *irrelevant* and *insensitive* in nature.

13. Mere change in the counsel would not give any automatic handle to the new counsel to seek further cross-examination, particularly, when it is not a case where there was no cross-examination at all or examination was a cursory one. On the contrary, the cross-examination, herein seems to be comprehensive enough.



14. Any prosecutrix in a case of present nature cannot be permitted to re-live trauma, again and again, particularly, when Section 33(5) of POCSO Act also specifies that the Special Court would ensure that the child is not called, repeatedly, to testify in the Court.

15. Undoubtedly, the abovesaid provision may not be absolute in nature and in a given case, the Court may still permit any such witness to be recalled. It, however, depends on the peculiar facts of the given case and there cannot be any straitjacket or rigid formula in this regard.

16. The manner in which she has already been comprehensively cross-examined, asking her to enter into witness box would make her undergo the ordeal again, which would not be justifiable from any angle whatsoever.

17. Finding no merits in the present petition, the same is hereby dismissed.

(MANOJ JAIN)
JUDGE

FEBRUARY 7, 2026/sw/pb