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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Date of Decision: 12th May, 2026**

+ **CRL.M.C. 2350/2025 & CRL.M.A. 10581/2025**

JAVED AHMED AZMI

.....Petitioner

Through: **Ms. Riyal Khandelwal, Advocate.**

versus

STATE AND ORS

.....Respondents

Through: **Ms. Priyanka Dalal, APP for the State
with SI Mohit Kumar, PS Hauz Khas.**

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

JUDGMENT (oral)

1. The point raised in the present petition is very short and precise.
2. Petitioner is facing trial for commission of offences under Sections 420/408 IPC.
3. The case is very old as FIR was registered way back in the year 2011.
4. During the trial, the concerned Investigating Officer i.e. PW-12 Inspector Inderjeet appeared before the learned Trial Court on 12.05.2023 but his cross-examination was deferred as the defence counsel was not available. Thereafter, there was no cross-examination from the side of the defence and when an application under Section 311 Cr.P.C. was moved by the defence and the witness was recalled, unfortunately, the concerned counsel, again, was not present and, therefore, the witness was discharged, after granting due opportunity on 24.09.2024.
5. Thereafter, another application was moved by the defence seeking his cross-examination which did not find favour either with the learned Trial Court or with the learned Revisional Court.



6. The sole ground taken by the petitioner is to the effect that his counsel was not available and, therefore, the right of cross-examination was closed. She submits that litigant cannot be penalized on account of unintended inaction on the part of his counsel. It is submitted that certain relevant questions are to be put to the abovesaid Investigating Officer and if permission is not granted, it may amount to denial of fair trial.

7. Evidently, the petitioner is himself responsible for his miseries as the various opportunities granted to him were not utilized. Mere non-availability of counsel would not be sufficient to permit any such recalling under Section 311 Cr.P.C. when the approach of the party is found to be lethargic and sluggish.

8. The application moved under Section 311 Cr.P.C. is found to be very sketchy and it has not been elucidated as to why the concerned counsel was not available.

9. Learned Trial Court had dismissed the application on 04.10.2024 and the abovesaid matter was challenged by filing a Revision Petition and such Revision Petition was also dismissed by the learned Trial Court of Sessions on 28.02.2025. The abovesaid order dated 04.10.2024 would indicate that petitioner was given sufficient indulgence already. Relevant portion of said order reads as under:-

“Perusal of the record shows that IO Insp. Inderjeet was examined in chief on 12.05.2023 and his cross-examination was deferred at the request of the accused as the main counsel was not available. On said date, proxy counsel was available on behalf of accused. Thereafter, Insp. Inderjeet was summons (sic) for 09.06.2023. Insp. Inderjeet thereafter appeared on 21.06.2024 and again the main counsel for accused was not available for the cross-examination. After providing sufficient opportunity, right of accused to cross-examine the witness was closed and the matter was thereafter listed for SA. On 16.08.2024 proxy counsel appeared on behalf of accused and moved an application u/s 311 Cr.P.C. for recalling Insp.



Inderjeet. The application was allowed and one opportunity was granted to accused for his cross-examination. It was specifically directed that in case accused fails to cross-examine the witness, no further opportunity shall be granted. The matter was fixed for cross-examination of Insp. Inderjeet. On 24.09.2024 Insp. Inderjeet appeared before the Court. The accused was represented through proxy counsel Mr. Ajay Goswami. Despite providing sufficient time and opportunity the proxy counsel denied the cross-examining the witness. In the previous order dt. 24.09.2024 it is clearly mentioned that Ajay Goswami appearing as proxy counsel, had previously cross-examined PW1 and PW11 in the case which shows that he was well aware about the facts of the case. Despite giving sufficient opportunity to accused, accused had failed to cross-examine the witness. Again today an application is moved on behalf of accused for recalling PW IO Insp. Inderjeet. The accused cannot take the advantage of his own wrong for recalling the witness. The application moved on behalf of accused does not appear to be bonafide. The FIR pertains to year 2011 and the case is pending before the Court since 2013. The matter is already 11 years old case. It does not appear justify to again recall the witness Insp. Inderjeet for his cross-examination, when sufficient opportunity is already granted to accused which accused had failed to avail.”

10. The learned Revisional Court was also compelled to dismiss the petition while noticing that the case was 11 years old and sufficient opportunities had already been granted to the defence to cross-examine the Investigating Officer and since the petitioner, intentionally, chose not avail the same, there was no ground to interfere with the impugned order.

11. This Court does not find any illegality in the approach of the learned Trial Court or, for that matter, *qua* the observations made by the learned Revisional Court. In the interregnum, the petitioner stopped appearing before the learned Trial Court and was declared ‘*absconder*’. He has been arrested only on 10.05.2026 and is now scheduled to be produced before the learned Trial Court on 14.05.2026.

12. There is one more aspect of the case. Though, the present petition has been filed under Section 528 of BNSS, for all practical purposes, it is a second



revision petition by the same petitioner, which is not permissible in the eyes of law. It is settled position that the inherent powers provided under the Cr.P.C. (now BNSS) cannot be utilized for exercising powers which are expressly barred. Reference be made to *Dharampal and Others v. Ramshri (Smt) and Others*: (1993) 1 SCC 435, *Deepti Alias Arati Rai v. Akhil Rai and Others*: (1995) 5 SCC 751 and *Sharma Welding Store & Ors. v. Fortune Weld*: 2025 SCC OnLine Del 10563. Moreover, there is no illegality or failure of justice, which may necessitate any inference by this Court by invoking its inherent powers.

13. In view of the above, this Court does not find any merit or substance in the present petition. The same is, hereby, dismissed.

14. Pending application also stands disposed of.

(MANOJ JAIN)
JUDGE

MAY 12, 2026/st/sa