

HIGH COURT OF DELHI

Date of Decision: 29th February 2024

CORAM: HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

CRL.M.C. 4244/2023 AND CRL.M.A. 33217-18/2023

NARINDER PAL VERMA ...Petitioner

versus

KAMAL THAPAR ...Respondent

Legislation:

Section 482 of the Criminal Procedure Code (Cr.P.C.)

Section 311 of the Cr.P.C.

Subject: Petition challenging the order of the trial court dismissing the application for cross-examination of the complainant due to repeated adjournments and non-appearance of the petitioner's counsel.

Headnotes:

Criminal Procedure – Application under Section 482 Cr.P.C. – Setting aside order of Trial Court – Petitioner sought setting aside of order dismissing application under Section 311 Cr.P.C. for cross-examination of complainant – Allegation of arbitrary dismissal by Trial Court – Petitioner's counsel's absence due to father's illness – Contentions regarding inability to appear – Subsequent inability to cross-examine complainant – Consideration of precedents – Sufficiency of opportunities granted for cross-examination – Four-year pendency of cross-examination – Lack of cogent explanation for delay – Distinction from relied-upon judgments – Upholding of Trial Court's order – Dismissal of petition and pending applications.

Referred Cases:

- Duni Chand v. Godawari
- Sandeep Singh v. Ranjana Gawri

JUDGMENT

RAJNISH BHATNAGAR, J.

1. The present petition has been filed under Section 482 Cr.P.C. by the petitioner for setting aside the order dated 17.03.2023 passed in Ct. Cases 1698/2018, whereby the application filed under Section 311 Cr.P.C. was dismissed.

2. Heard.
3. Records Perused.
4. During the course of arguments, it was submitted by the learned counsel for the petitioner that the impugned order dated 17.03.2023 has been passed in an arbitrary manner by the learned Trial Court without considering the fact that the counsel for the petitioner could not appear on 20.01.2023 before the learned trial court as his father had suffered a dementia attack and except him no other male member was available in the family to take care of his father. It was further submitted that the learned Trial Court has failed to take note that counsel for the petitioner could not appear due to unavoidable circumstance that his father is a patient of acute and advanced dementia whose treatment is going on before a neurosurgeon. It was further submitted that while closing the rights of the petitioner to cross-examine the complainant vide order dated 20.01.2023, the learned Trial Court did not appreciate that whenever counsel for the petitioner did not appear, he had informed the opposite counsel regarding the same. It was further submitted that cross-examination of the complainant is essential for just and proper adjudication of the case. It was urged by the learned counsel for the petitioner that in any case, the petitioner should not be made to suffer because of fault on the part of his previous counsel.
5. In support of his arguments, learned counsel for the petitioner had relied on the view taken by the Hon'ble Supreme Court in ***Duni Chand v. Godawari*** and on a judgment passed by this Court in ***Sandeep Singh v. Ranjana Gawri***.
6. As the present petition challenges the order dated 17.03.2023, it is necessary to look into the impugned order, which is reproduced hereunder:

“Case was fixed for cross examination of complainant as CW-1 on 15.05.2019. Thereafter number of opportunities had been granted to accused. On 02.06.2022 adjournment was sought on behalf of accused as main counsel was not available. Thereafter, on 19.10.2022 also adjournment was sought. Subsequently, on 23.11.2022 proxy counsel for the accused had yet again sought an adjournment. Thereafter on 04.01.2023 also adjournment was sought and final opportunity was granted for the next date. Thereafter, case was listed on 20.01.2023 for the said purpose but the counsel for accused was not present for cross-examination of CW 1 and evidence was not recorded. Accordingly, evidence was closed. Today an application moved on behalf of accused U/s 311 Cr.P.C for cross-examination of the complainant.

Heard.

I have perused the record.

As per the record sufficient opportunities had been granted to the accused for cross-examination and the accused has failed to cross-examine the complainant. Hence, the evidence has been closed. The application has no merit and is misconceived. Application is dismissed. SA has been recorded. Accused wants to lead evidence in defence.

To come up for DE on 31.05.2023.“

7. A perusal of the impugned order shows that the matter was first listed before the learned trial court for cross-examination on 15.05.2019 and after granting various opportunities, it remained pending till 20.01.2023. Thereafter, the learned Trial Court having no option but to close the opportunity for cross-examination of the complainant.

8. In essence, the matter remained on Board for cross-examination of CW-1 for about four years and there is no cogent explanation forthcoming from the petitioner except the bald plea that father of the counsel for the petitioner is suffering from dementia and that too from the record appears to be a half-hearted plea. Furthermore, even before this Court, there is nothing on record in support of the said contention. Moreover, the petitioner could have arranged another counsel and could have proceeded with the case.

9. However, the present case is of such a nature which, in my opinion, should be expeditiously decided, but cross examination could not be done in four years, and more than enough indulgence was granted to the petitioner for the said purpose by the Trial Court.

10. Learned counsel for the petitioner had relied on the judgment in ***Duni Chand v. Godawari (supra)***. There is no dispute with regard to the settled proposition of law but the judgments relied upon by counsel for the petitioner is distinguishable to the facts and circumstances of the present case and each case is to be decided on the basis of its own facts and circumstances.

11. Therefore, I find no infirmity in the impugned order dated 17.03.2023 passed by the learned Trial Court and the same is hereby upheld. Furthermore, prayers are untenable in law and, therefore, this Court does not deem it appropriate to even issue notice to the respondent.

12. Accordingly, the petition along with pending applications stands dismissed.

*Disclaimer: Always compare with the original copy of judgment from the official website.