
(2013) 02 DEL CK 0127

In the Delhi High Court

Case No : Criminal M.C. 127 of 2013 & Criminal M.C. 3348 of 2012

Dheeraj Singh Rana

APPELLANT

Vs

State (NCT of Delhi) and Another

RESPONDENT

Date of Decision : 04-02-2013

Acts Referred:

Citation : (2013) 02 DEL CK 0127

Hon'ble Judges : G.P. Mittal, J

Bench : Single Bench

Advocate : Bankim K. Kulshrestha, for the Appellant; Jasbsir Kaur, APP for the State, for the Respondent

Judgement

G.P. Mittal, J.—By virtue of this Petition, the Petitioner, who is one of the accused in a case under Sections 302/ 307/ 201 of the IPC read with Section 120-B IPC invokes inherent powers of the Court u/s 482 of the Code of Criminal Procedure, 1973 (Cr. P.C.) for setting aside of the order dated 19.12.2007 passed by the learned Additional Sessions Judge ("ASJ") and seeks recalling of PW-1, PW-52, PW-114, PW-149, PW-168 and PW-170 examined by the prosecution and summoning of the seven persons as mentioned in the application u/s 311 Cr. P.C. The learned "ASJ" while declining the Petitioner's request to recall the earlier said witnesses gave detailed reasons as to when the witnesses were examined and when they were cross-examined. The learned "ASJ" opined that the witnesses were cross examined at length and some of the witnesses were cross examined on several dates. So much so, PW-168 SI Manoj Tyagi was cross examined on about 27 dates of hearing between 05.04.2010 to 28.07.2012. The Petitioner has not given any reason for recalling the earlier stated witnesses for the purpose of cross examination.

2. It is true that the powers conferred u/s 311 Cr. P.C. on the Court are very wide. Any Court at any stage of inquiry or trial is permitted to recall and re-examine any person already examined either suo moto or at the request of any party. What is required to be shown by the party making the request is that the

evidence of the said person must be essential for a just decision of the case.

3. In the instant case, there was not even a whisper as to why the Petitioner wanted to further cross examine the witnesses sought to be recalled.

4. Similarly, seven witnesses which were sought to be summoned u/s 311 Cr. P.C. was primarily on the count that in the initial report to the Home Ministry the version of the senior police officers was that the attack was made by three masked man. A letter dated 25.07.2001 written by the Joint Commissioner of Police to Mr. P.K. Jalali, Joint Secretary (UT), Ministry of Home Affairs has not been disputed by the prosecution. In fact, the Additional Commissioner of Police in an RTI application provided a copy of the letter dated 25.07.2001 to one Kuldeep Kumar, in a reply furnished under RTI Act. Thus, the question of the report sent by the Joint Commissioner of Police to the Home Ministry is not in dispute.

5. Learned "ASJ" observed that an application u/s 91 Cr. P.C. for production of the documents was disposed of with the observations that the documents can be summoned and produced in his defence. Since the initial information sent to the Home Ministry is not disputed, it cannot be said that examination of these witnesses is essential for the just decision of the case. The prayer to summon these seven witnesses u/s 311 Cr. P.C. was rightly declined by the learned ASJ. The order dated 19.12.2012 does not call for any interference under inherent powers of this Court u/s 482 Cr. P.C.

6. It is clarified that this order shall be without prejudice to the rights of the Petitioner to apply to the learned "ASJ" to summon any of these witnesses in defence and the learned "ASJ" shall be at liberty to summon the witnesses if the Petitioner is able to make out a case for their examination in defence.

7. The Petition is disposed of in above terms. Pending applications also stand disposed of.