

(2014) 08 DEL CK 0273
In the Delhi High Court
Case No : CrI. M.C. No. 2762/2013

Kritender Sharma

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 26-08-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 311, 313, 315, 482
Penal Code, 1860 (IPC) — Section 420, 467, 468, 471

Citation : (2015) 1 JCC 24

Hon'ble Judges : V.P. Vaish, J

Bench : Single Bench

Advocate : G.K. Bharti and Rajesh Dhawan, Advocate for the Appellant; Yogesh Verma, APP and SI Lalit Kumar, P.S. Karol Bagh, Advocate for the Respondent

Judgement

V.P. Vaish, J.—By way of the present petition under Section 482 of the Code of Criminal Procedure (hereinafter referred to as "Cr.P.C.") , the petitioner has challenged the order dated 01.06.2013 passed by learned Metropolitan Magistrate, (C-01) , Tis Hazari Courts, Delhi whereby the application under Section 311 of Cr.P.C. and application under Section 315 of Cr.P.C. filed by the petitioner were dismissed.

2. Brief facts of the present case are that the petitioner is facing trial in case FIR No.47/1995 under Sections 420/ 467/ 468/ 471 of IPC registered at P.S. Karol Bagh, New Delhi and on 06.01.1997, charges for the offences under Sections 420/ 467/ 468/ 471 of IPC were framed by learned Metropolitan Magistrate. The prosecution evidence was closed on 15.07.2010. The statement of accused/ petitioner under Section 313 of Cr.P.C. was recorded on 19.01.2011 and the petitioner chose to lead defence evidence. The petitioner examined Bala Krishan Chetri (DW-1) , Shiv Raj Singh (DW-2) , S.K. Azad (DW-3) , Ras Bihari Prasad (DW-4) , Manoj Kumar (DW-5) , Pandya Jagmohan (DW-6) , Smt. Manjula (DW-6) and the evidence was closed by learned Metropolitan Magistrate, Delhi on 25.07.2012.

3. The petitioner moved an application under Section 315 of Cr.P.C. and another application seeking permission to summon the record clerk of Delhi School Tribunal to verify the certified copies on 06.04.2013. Vide impugned order dated 01.06.2013 both the applications were dismissed by learned Metropolitan Magistrate.

4. Learned counsel for the petitioner submits that the petitioner had applied for the post of clerk and he was appointed by School authorities with the approval of Directorate of Education on 31.07.1993 and appointment letter dated 31.07.1993 was issued. He submits that the petitioner want to summon the record clerk from Delhi School Tribunal to verify the certified copies.

5. Learned counsel for the petitioner also submits that the petitioner wants to examine himself under Section 315 Cr.P.C.

6. On the other hand, learned APP for the State submits that earlier the petitioner moved an application under Section 311 Cr.P.C., which was dismissed by the trial court on 09.03.2004. The petitioner filed a revision petition bearing Criminal Revision No.14/2004, which was allowed by learned Additional Sessions Judge, Delhi vide order dated 29.09.2004 and the petitioner was permitted to further cross-examine PW-1 and PW-2. On 10.11.2004 PW-1 and PW-2 were present and petitioner was given opportunity to cross examine them. Again the petitioner filed a Criminal Revision No.10/2005, which was also dismissed by learned Additional Sessions Judge, Delhi vide order dated 01.04.2005. The petitioner thereafter preferred Criminal M.C. No.2019/2005, which was also dismissed by this Court on 07.02.2006. Again the petitioner moved an application under Section 311 Cr.P.C., which was dismissed by learned Metropolitan Magistrate. Learned APP for the State also submits that on one pretext or the other the petitioner wants to delay the matter.

7. At this stage, learned counsel for the petitioner submits that he does not want to summon record clerk of Delhi School Tribunal and he does not press prayer (b) (ii) of the petition. The statement of petitioner, who is present in Court today, has been separately recorded in this regard. Learned counsel for the petitioner has prayed for examination of petitioner under Section 315 of Cr.P.C. only.

8. Considering the facts and circumstances of the case and the submissions made by learned counsel for both the parties, the impugned order dated 01.06.2013 passed by learned Metropolitan Magistrate is modified to the extent that the application under Section 315 of Cr.P.C. filed by the petitioner is allowed and the petitioner is permitted to examine himself. However, only one effective opportunity will be given to the petitioner. In case, the petitioner fails to examine himself on the date fixed by the learned Trial Court the evidence of the petitioner shall be deemed to have been closed.

9. With the aforesaid observations, the petition is disposed of. Trial Court record be sent back forthwith.

Crl.M.A No. 10550/2014

The application is dismissed as infructuous.