

Ramesh Sharma Vs State

Court: Delhi High Court

Date of Decision: Nov. 15, 2019

Acts Referred: Code Of Criminal Procedure, 1973 " Section 311, 482
 Indian Penal Code, 1860 " Section 377, 506

Hon'ble Judges: Manoj Kumar Ohri, J

Bench: Single Bench

Advocate: S.K. Jha, Radhika Kolluru

Final Decision: Disposed Of

Judgement

Manoj Kumar Ohri, J

1. The present petition under Section 482 Cr.P.C. has been filed on behalf of the petitioner assailing the order dated 21.11.2017 whereby the

petitioner's application under Section 311 Cr.P.C. seeking recall and cross-examination of PW-1 was dismissed.

2. Learned counsel for the petitioner submits that the present case arises out of FIR No.40/2009 registered under Sections 377/506 IPC at Police

Station Nand Nagri, Delhi. He further submits that the matter was initially fixed for 21.11.2017. On that date, although the accused was present,

however, his counsel could not appear as he was on his legs in another Court. On that day, the petitioner's right to cross-examine the witness was

closed. Learned counsel further submits that thereafter, only the statement of the accused was recorded and the matter was posted for recording of

defence evidence. He accordingly prays that only one opportunity may be granted to the petitioner to cross-examine the witness/PW-1, who is a major

now.

3. Learned APP for the State, on the other hand, submits that the present petition has been filed on behalf of the petitioner after a delay of about two

years and the petition deserves to be dismissed on this ground.

4. The scope of provisions of Section 311 Cr.P.C was considered by the Supreme Court in the case of P.Sanjeeva Rao v. State of A.P. reported as

(2012) 7 SCC 56, wherein it was held as under:-

“20. Grant of fairest opportunity to the accused to prove his innocence was the object of every fair trial, observed this Court in Hoffman Andreas

v. Inspector of Customs, Amritsar. The following passage is in this regard apposite:

“6. In such circumstances, if the new Counsel thought to have the material witnesses further examined the Court could adopt latitude and a

liberal view in the interest of justice, particularly when the Court has unbridled powers in the matter as enshrined in Section 311 of the Code. After all

the trial is basically for the prisoners and courts should afford the opportunity to them in the fairest manner possible.”

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23. We are conscious of the fact that recall of the witnesses is being directed nearly four years after they were examined-in-chief about an incident

that is nearly seven years old.. We are of the opinion that on a parity of reasoning and looking to the consequences of denial of opportunity to

cross-examine the witnesses, we would prefer to err in favour of the appellant getting an opportunity rather than protecting the prosecution against a

possible prejudice at his cost. Fairness of the trial is a virtue that is sacrosanct in our judicial system and no price is too heavy to protect that virtue. A

possible prejudice to prosecution is not even a price, leave alone one that would justify denial of a fair opportunity to the accused to defend himself.”

5. In view of above enunciation of law and the facts of the present case, the petition is allowed and the order dated 21.11.2017 is set aside, subject to

payment of costs of Rs.5,000/- to be deposited by the petitioner with the “Delhi High Court Legal Services Committee” within a period of one

week. The trial court shall summon the witness/PW-1 for one date only. On the said date, the counsel for the petitioner shall conclude the cross-

examination of the said witness. No further opportunity shall be granted for the said purpose.

6. The petition is disposed of in the above terms.