

**Mohd. Shakir Vs. State**

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**SooperKanoon Citation :** [sooperkanoon.com/686103](http://sooperkanoon.com/686103)

**Court :** Delhi

**Decided On :** Sep-20-1988

**Reported in :** 36(1988)DLT228

**Judge :** H.C. Goel, J.

**Acts :** [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 311

**Appeal No. :** Criminal Miscellaneous (Main) Appeal No. 978 of 1988

**Appellant :** Mohd. Shakir

**Respondent :** State

**Advocate for Pet/Ap. :** M.S. Siddique and; Rupinder Wasu, Advs

**Judgement :**

**H.C. Goel, J.**

(1) This is a petition under S. 482 Cr.P.C. directed against the order of the learned Metropolitan Magistrate by which he dismissed the application of the accused petitioner praying the trial court to summon constable Balwinder Singh, PW4, for his cross-examination as also the order of the learned Additional Sessions Judge, Delhi rejecting the revision petition of the petitioner filed against the said order of the learned Magistrate. The petitioner was standing trial in the court of Shri R.K. Yadav, Metropolitan Magistrate, Delhi under Sees. 341/332/353/379 IPC. On July

17, 1986 the examination-in-chief of constable Balwinder Singh, PW4, was recorded. On that day the counsel for the accused Mr. Ms. Siddiqui could not be present before the learned trial court at the hearing of the case. It is however, admitted that he had appeared before the learned Magistrate in the earlier hour of the day and had requested the learned Magistrate that he was busy in the High Court on that day and in case it is not possible for him to be present at the time of the recording of the evidence of the prosecution their examination-in-chief may only be recorded and the case may be adjourned to enable him to conduct the cross-examination of the witnesses on a later date. Mr. Siddiqui could not appear in the court of the learned Magistrate on that day. The examination-in-chief of PW4, constable Balwinder Singh, was recorded on that date. The learned Magistrate however, adjourned the case for the recording of the statements of the other witnesses and the statement of constable Balwinder Singh was held as concluded i.e. that on the adjourned date the cross-examination of constable Balwinder Singh was not to be conducted. The case was adjourned from time to time. It is alleged that the counsel for the petitioner inspected the record of the case some time in July. 1988 and he found that the statement of constable Balwinder Singh Public Witness stood concluded and he had no right to cross-examine that witness. An application was moved on behalf of the petitioner before the learned Magistrate praying for the recalling of PW4, constable Balwinder, in order that his counsel could cross-examine the witness. This application was dismissed by the learned Magistrate by his impugned order dated July 6, 1988. The only ground for the dismissal of this application as stated in the impugned order is that steps for permission to cross-examine the witness were taken belatedly. The learned Additional Sessions Judge dismissed the revision petition of the petitioner on the ground that the impugned order of the learned Magistrate was an interlocutory order and no revision lay against that order.

(2) So far as the impugned order of the learned Additional Sessions Judge is concerned no fault can be found with that. However, as regards the impugned order of the learned Magistrate the admitted position is that the prosecution evidence had not as yet concluded. The witness i.e. constable Balwinder Singh is the injured person and is the most material witness of the prosecution. It is also clear that the counsel for the petitioner could not put in appearance on the date on

which the examination in-chief of this witness was recorded by the learned Magistrate on account of his being busy in this Court. This fact was duly intimated by the counsel for the petitioner to the learned Magistrate on that very day before the recording of the statements of the prosecution witnesses started. Under these circumstances the counsel for the petitioner may well have been under the bonafide belief that his right to cross examine constable Balwinder Singh, PW4, must have been protected by the learned Magistrate and that he may be summoned on some further date to enable the petitioner's counsel to cross-examine him. In any case the mere fact that there was a delay on the part of the petitioner to approach the court with the prayer to enable him to get the witnesses cross-examined by his counsel by itself did not justify denying the right to the petitioner to get the witness cross-examined by his counsel, particularly when the statements of all the prosecution witnesses had not till then concluded. I need hardly say that the powers of a trial court under S. 311 Cr.P.C. to recall any witness already examined by it are very wide and the court may recall any witness at any time for the purposes of cross-examination if his evidence appears to be essential to the just decision of the case. In view of what has been said above it is clear that the learned Magistrate was not justified in declining the prayer of the petitioner to enable him to cross-examine constable Balwinder Singh, PW4. I accordingly accept the petition, set aside the impugned order of the learned Magistrate and direct him to resummon PW4, constable Balwinder Singh in order to enable the counsel for the petitioner to cross-examine this witness.