

Avtar Singh Vs State

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Court : Delhi

Decided On : Aug-04-2010

Judge : Mr. Hima Kohli, J.

Appeal No. : CRL. M.C. 1326/2010

Appellant : Avtar Singh

Respondent : State

Advocate for Def. : Mr. M.N. Dudeja, Adv.

Advocate for Pet/Ap. : Mr. R.P. Luthra , Mr. Karan Jain, Mr. Rahul Singh , Ms. Aditi Sambhar, Adv.

Judgement :

1. Whether Reporters of Local papers may No be allowed to see the Judgment?
2. To be referred to the Reporter or not? No
3. Whether the judgment should be No reported in the Digest?

ORDER

1. The present petition is filed by the petitioner under Section 482 of the Cr.PC praying inter alia for setting aside an order dated 15.04.2010 passed by the learned ASJ, Karkardooma Courts, in FIR No.105/2004 lodged against the

petitioner and another accused under Section 308/506(2)/34 IPC with Police Station: Mandawali.

2. By the aforesaid order, the application filed by the petitioner under Section 311 Cr.PC for recalling two prosecution witnesses, namely, PW1 Mukesh Kumar, the complainant and PW7 Rizwan, for cross- examination on his behalf was rejected. While passing the rejection order, the Court observed that the aforesaid witnesses had already been cross- examined on behalf of the accused persons by the counsel on 03.05.2009 and the application was silent as to the point left by the earlier counsel on which, further cross-examination of PW1 and PW7 was sought.

3. Counsel for the petitioner states that without going into any other issue as raised in the present petition pertaining to the authority of the previous counsel to cross-examine the said witnesses, one opportunity be granted to cross-examine PW1 and PW7 before arguments are addressed in the matter, as failure to do so will cause irreparable loss and injury to the petitioner. Pertinently, PW1 was cross-examined on behalf of both the accused persons by a counsel on 03.05.2009 and PW7 was cross-examined on 12.10.2009. The present application came to be filed by the petitioner on 09.04.2010, stating inter alia that the previous counsel had not cross- examined the said witnesses to bring out the defence of the petitioner.

4. No doubt, the provisions of Section 311 Cr.PC empower the Court to summon any person as a witness or re-examine/recall any person already examined at any stage of the trial, object being to bring on record the evidence not only from the point of view of the accused, but also from the point of view of the prosecution. Considering the fact that final arguments have yet to be addressed in the matter and the counsel for the petitioner assures the Court that he shall not delay the proceedings if one date is fixed for cross-examination of the two witnesses, i.e., PW1 & PW7, which he states shall be sufficient, the present petition is allowed. However, the petitioner is directed to pay costs of Rs.10,000/-, out of which Rs.5,000/- shall be paid to the complainant before the date of hearing fixed before the learned ASJ and the remaining costs Rs.5,000/- shall be deposited with the Delhi High Court Legal Services Committee within one week from today.

5. As the matter is stated to be listed before the learned ASJ on 16.08.2010, the parties are directed to appear before the concerned court on the said date. On the said date, only one opportunity shall be given to the petitioner to cross-examine PW1 and PW7 by fixing a date in that regard. Proof of payment/deposit of costs shall be shown to the concerned Court on the aforesaid date.

6. The petition is disposed of.

7. A copy of this order shall be forwarded by the Registry forthwith to the concerned Court for perusal and compliance.

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