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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment delivered on: 08.04.2025*

\+ **CRL.M.C. 2213/2025 & CRL.M.A. 9940/2025**

SATISH @SATBHAGWAN .....Petitioner

Through: Mr. Pradeep Rana, Mr. Gagan Bhatnagar, Mr. Ankit Rana, Mr. Deepak Chhillar, Mr. Rahul Prashar and Ms. Riva Rana, Advocates

versus

THE STATE N.C.T OF DELHI .....Respondent

Through: Mr. Naresh Kumar Chahar, APP for the State with Mr. Naveen Saini, Advocate and with Inspector Neetu and SI Jyoti, P.S. Kanjhawala.

CORAM:
HON'BLE DR. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

DR. SWARANA KANTA SHARMA, J

1. By way of this petition, the petitioner assails the order dated 19.03.2025 [hereafter '*impugned order*'], passed by the learned Additional Sessions Judge, North-West, Rohini Courts, New Delhi [hereafter '*Trial Court*'] *vide* which the application preferred by the petitioner under Section 348 of Bharatiya Nagarik Suraksha Sanhita, 2023 [hereafter '*BNSS*'], seeking summoning of a witness namely

Ms. Priyanka Sehgal, was dismissed, in case arising out of FIR No. 378/2013, Police Station Kanjhawala, North-West, Delhi.

2. Briefly stated, the facts of the present case are that on 17.11.2013, pursuant to receipt of a PCR call, the police had reached the spot and found that the villagers of the area had caught hold of a man, i.e. the present petitioner Satish, who had been beaten up by the members of public. Upon enquiring, the police was informed that the petitioner had entered the house of one Deepak at night (for committing theft) and had caught hold of the prosecutrix. The medical examination of the prosecutrix was conducted at Sanjay Gandhi Memorial Hospital, Mangolpuri. Upon a complaint being lodged by the prosecutrix, the FIR was initially registered for offence under Sections 451/354 of Indian Penal Code, 1860 [hereafter '*IPC*']. Thereafter, the statement of prosecutrix was recorded under Section 164 of the Code of Criminal Procedure, 1973 [hereafter '*Cr.P.C.*'], wherein she disclosed that the petitioner herein had removed his as well as prosecutrix's clothes and was about to rape her. After completion of investigation, chargesheet was filed for offence under Sections 376/323/451 of IPC. As set out in the petition, charges were initially framed under Sections 451/323/376 read with Section 511 of IPC, but after recording of testimony of the prosecutrix, Section 511 of IPC was removed. Between 2016 and 2023, the prosecution evidence was recorded. The statement of accused under Section 313 of Cr.P.C. was recorded on 06.12.2023 and 20.02.2024. Thereafter, the accused (petitioner) opted to lead defence evidence, and

examined three defence witnesses between the period 27.02.2024 to 14.08.2024. The defence evidence then stood closed and the matter was put for final arguments.

3. It is the petitioner's case that he and the prosecutrix shared a friendly relationship even before her marriage, which continued afterward. They used to talk frequently, especially when the prosecutrix's husband was away, and she had introduced the petitioner to her husband as a friend, and her husband had also taken a loan from the petitioner. When the petitioner had asked for repayment, the prosecutrix, allegedly at her husband's insistence, had called him to her house on the pretext of returning the money. However, when he had arrived, he was beaten up, and a false story was created to frame him as a thief. Later, in an attempt to cover up their actions, the prosecutrix and her husband had allegedly falsely implicated the petitioner in this case. As part of his defence, the petitioner had produced a voice recording of a conversation between the prosecutrix and the wife of petitioner, which he claimed shows that the allegations were fabricated. Although the prosecutrix had denied the voice was hers during cross-examination, the recording was later exhibited during defence evidence along with a certificate under Section 65B of Bharatiya Sakshya Adhiniyam, 2023 [hereafter '*BSA*']. In this background, the petitioner had moved an application under Section 39 of BSA, seeking directions for recording the voice samples of the prosecutrix and the wife of the petitioner and for comparison with the audio recording placed on record by the

petitioner, but the same was dismissed by the learned Trial Court *vide* order dated 31.01.2025.

4. It is also the petitioner's case that he was using one mobile number, which is registered in the name of Ms. Priyanka Sehgal, and was in regular contact with the prosecutrix. The Call Detail Records (CDRs) of the petitioner's number, admitted under Section 294 of Cr.P.C., reflected that 494 calls were exchanged between them over three months. It is also stated that during cross-examination, the prosecutrix (PW2), her husband (PW4), and brother-in-law (PW7) had admitted that the number belonged to her and that she had received calls from the petitioner.

5. Thus, the petitioner had filed an application under Section 348 of BNSS seeking summoning of Ms. Priyanka Sehgal as a defence witness, in whose name the mobile number in question was registered. The said application was dismissed by way of the impugned order dated 19.03.2025. The relevant portion of the impugned order is set out below:

> " ...The accused is facing trial for the offences under Section 451/323/376 IPC. The case of the prosecution against the accused is that in the night of 17.11.2013, he tresspassed into the house of the prosecutrix, caused simple injuries to her and raped her.
>
> The present case is more than ten years old and is at the stage of final arguments. Repeated applications have been moved on behalf of the accused on one ground or the other. The first application (Misc.Cr.No.481/24) at the stage of final arguments was moved under Section 311 Cr.P.C. vide which the liberty was sought for recalling the prosecutrix for the cross-examination so that an audio recording can be put to her.

That application was disposed off as withdrawn when it was came to the notice that the prosecutrix was already put to that audio recording while she was cross-examined on 16.10. 2016.

Another application was moved under Section 39 BSA seeking direction to record the voice samples of the prosecutrix and wife of the accused. That application was also dismissed on 31.01.2025. (It is also to be mentioned that during the prosecution evidence also application under Section 311 Cr.P.C. was moved after more than 5 years for the cross-examination of the husband of the prosecutrix which was allowed since the opportunity to cross-examine the husband of the prosecutrix not availed completely by accused in two different occasions for which the opportunity to cross-examination was closed.)

Further, adjournment was sought on the next date of hearing fixed for 11.02.2025 for advancing final arguments citing the non availability of the main counsel.

On 27.02.2025, part final arguments were advanced and the matter was adjourned for 11.03.2025 for final arguments.

On 11.03.2025 also, again adjournment was sought by Ld. Defence Counsel and now the matter is fixed for 20.03.2025.

The CDR in question was received long back alongwith the chargesheet in the year 2014 and the accused has the copy of the same since 15.02.2014. The accused was aware since inception that the mobile number in question was in the name of one Priyanka Sehgal. The CDR was admitted by the accused. Now after ten years of the receiving of the chargesheet the accused wants to summons Ms. Priyanka Sehgal to bring on record the alleged actual owner of the mobile number in question. This lact that the mobile number was not registered in the name of the accused was in the notice of the accused for than a decade but he opted not to lead any affirmative evidence on the aspect as to who was the actual user of that mobile number.

The accused was given ample opportunity to lead defence evidence. Several adjournments were taken by the accused to lead defence evidence. The matter remained at the stage of defence evidence from 27.02.2024 to 14.08.2024 in which more than 7 opportunities were given to lead defence evidence and three witnesses were examined in defence evidence.

> After the part final arguments, when some loopholes were exposed, the accused cannot be given liberty to plug those loopholes. It will lead to unending trial of the present matter which is already pending for more than a decade. The procedural law cannot be twisted again and again just to derail the trial.
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> In these circumstances, no ground made out for allowing the present application or for summoning Ms. Priyanka as defence witness.
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> **The present application is hereby dismissed.**
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> Put up for final arguments on the date already fixed i.e. on **20.03.2025**..."

6. While assailing the impugned order, it was argued by the learned counsel appearing for the petitioner that Ms. Priyanka Sehgal, a friend of the petitioner, ought to be summoned as a defence witness, as her testimony is essential to establish the actual user of the mobile number. It was contended that the learned Trial Court failed to appreciate that Ms. Sehgal is the registered owner of the said number, which was used for extensive communication between the petitioner and the prosecutrix – an aspect central to the petitioner's defence. The learned counsel further contended that the learned Trial Court erred in holding that summoning a witness at the stage of final arguments would amount to plugging gaps in the defence. It was submitted that the accused has an unfettered right to lead evidence in his defence, and there exists no bar on summoning a material witness at any stage before the pronouncement of judgment, so long as such evidence is relevant and necessary for a fair adjudication. It was also argued that the learned Trial Court had wrongly presumed the

application was filed to delay the trial, whereas the record reflects that the matter remained at the stage of defence evidence for only five months – from 27.02.2024 to 14.08.2024 – while the prosecution evidence continued for over seven years. Therefore, the delay cannot be attributed to the petitioner, who has participated in the trial proceedings diligently. It was also contended that under Section 348 of BNSS, an application for summoning a witness may be allowed at any stage of the hearing if it assists the court in reaching a just conclusion, but the Trial Court rejected the application in a mechanical manner without considering the implications of denying the petitioner such an opportunity. Thus, it was prayed that the impugned order be set aside.

7. On the other hand, the learned APP for the State has opposed the present petition and submitted that the trial in the present case has been pending for over a decade, and the filing of the present petition is only an attempt by the petitioner to cause further delay. It was submitted that the defence evidence had already been concluded on 14.08.2024, when the petitioner had examined three defence witnesses. Thereafter, an application under Section 311 of Cr.P.C. was moved by the petitioner but was withdrawn on 18.11.2024. Subsequently, another application filed under Section 39 of BSA was dismissed by the learned Trial Court *vide* order dated 31.01.2025. It was further submitted that final arguments in the matter have already been heard in part and thus, there are no grounds to allow the application of the petitioner for summoning Ms. Priyanka Sehgal as a

defence witness. It is therefore prayed that the impugned order be upheld and the petition be dismissed.

8. This Court has **heard** arguments addressed on behalf of both the parties and has perused the material available on record.

9. At the outset, it will be apposite to take note of Section 348 of BNSS – which is *pari materia* to Section 311 of Cr.P.C. – which reads as under:

> "**348. Power to summon material witness, or examine person present**.—Any Court may, at any stage of any inquiry, trial or other proceeding under this Sanhita, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or re-call and re-examine any person already examined; and the Court shall summon and examine or re-call and re-examine any such person if his evidence appears to it to be essential to the just decision of the case."

10. It has been repeatedly held by the Hon'ble Supreme Court that recall of a witness is not a matter of course and power under Section 311 of Cr.P.C. has to be exercised judiciously, with caution and circumspection, and not arbitrarily or capriciously. It has also been emphasized that the power is to be exercised on the basis of facts and circumstances of each case, and the discretionary power has to be balanced carefully with considerations such as uncalled for hardship to the witnesses and uncalled for delay in trial [Ref: ***Vijay Kumar v. State of U.P.:*** *(2011) 8 SCC 136;* ***State (NCT of Delhi) v. Shiv Kumar Yadav:*** *(2016) 2 SCC 402;* ***Ratanlal v. Prahlad Jat:*** *(2017) 9 SCC 340*].

11. In the present case, the record reveals that the FIR was registered in this case in the year 2013, and the recording of evidence had commenced in the year 2016. Thus, the case has been ongoing for more than ten years. It is also material to note that after recording the statement of accused, and the defence evidence, wherein three defence witnesses were examined, the matter had been put for final arguments.

12. As evident from the records, the petitioner herein had filed repeated applications on various grounds, including an application under Section 311 of Cr.P.C. (filed at the stage of final arguments) to recall the prosecutrix for further cross-examination, which was withdrawn upon realizing that the prosecutrix had already been confronted with the audio recording during her cross-examination on 16.10.2016. The petitioner had thereafter filed another application under Section 39 of BSA for recording the voice samples of the prosecutrix and the wife of the accused, which was also dismissed *vide* order dated 31.01.2025. As discernible from the petition, this order has not been challenged by the petitioner. These applications, undisputedly, were filed by the petitioner at the stage of hearing of final arguments.

13. The learned Trial Court has also clearly noted in the impugned order that the matter remained at the stage of defence evidence from 27.02.2024 to 14.08.2024, and during this period the accused was granted more than seven opportunities to lead evidence, and three

defence witnesses were examined, after which the defence evidence stood closed. Further, even at the stage of final arguments, repeated adjournments were sought on behalf of the petitioner. On 11.02.2025, adjournment was sought due to non-availability of the main counsel. On 27.02.2025, part arguments were advanced and the matter was adjourned to 11.03.2025, however on 11.03.2025, again an adjournment was sought by learned defence counsel.

14. A perusal of the impugned order and case file also makes it clear that the CDRs were received along with the chargesheet as far back as in the year 2014, and the petitioner has been in possession of the same since then. The petitioner, undoubtedly, would have been aware from the very beginning that the mobile number which he was using, to allegedly communicate with the prosecutrix, was registered not in his name but in the name of his friend Ms. Priyanka Sehgal. The CDRs were also admitted by the petitioner during the course of the trial. However, despite being aware for more than a decade that the mobile number was not registered in his name, the petitioner chose not to lead any evidence at the relevant stage to clarify who the actual user of the said number was. Now, after a lapse of more than ten years, the petitioner had sought to summon Ms. Priyanka Sehgal in an attempt to bring this aspect on record.

15. This Court is of the opinion that the power under Section 348 of BNSS (or Section 311 of Cr.P.C.) must be exercised for a legitimate and lawful purpose and not as a means to fill lacunas or

prolong the trial proceedings unnecessarily. While the provision grants the Court the discretion to ensure just decision of a case, it must be invoked cautiously, and to prevent delays, frivolous applications, or any kind of misuse.

16. Thus, considering the conduct of the petitioner, as noted above, this Court finds no reason to interfere with the impugned order dated 19.03.2025 passed by the learned Trial Court.

17. The petition alongwith pending application is accordingly dismissed.

18. Nothing expressed hereinabove shall tantamount to an expression of opinion on the merits of the case.

19. The judgment be uploaded on the website forthwith.

DR. SWARANA KANTA SHARMA, J

APRIL 8, 2025/zp