

SC No. 44843/2015
State Vs. Chaman Lal & Ors.
FIR No. 185/2012
PS: Seema Puri

12.3.2024

Present: Sh. F. M. Ansari, Ld. Addl. PP for the State.
Accused Chaman already expired (**case against this accused has already been abated**).
Accused Akhlaq produced in JC.
Accused Kamar Ali and Mehboob in person on bail with Ld. Counsel, Ms. Sangeeta Jain.
Accused Javed in person on bail with Ld. Proxy Counsel, Sh. Mohd. Rizwan.
Accused Arif, Akhlaq and Dal Chand in person on bail with Ld. Counsel, Sh. A. K. Singh.

1. The matter is fixed for evidence of the prosecution.
2. Notices issued to IO and MHC(M) are received back with reports 'served'.
3. Today, on calling the case, IO/Insp. Sushil and MHC(M) Ct. Vinay Kumar have appeared.
4. Sh. Vijay Goswami, Advocate has appeared and submitted that earlier, he was the counsel for the accused Dal Chand and submitted that since, Sh. A. K. Singh, Advocate is now representing this accused Dal Chand, so, he may be discharged. In view of the request made by Sh. Vijay Goswami, Advocate, he is discharged in this case.
5. Sh. Amit Kumar, Assistant Ahlmad posted in this court appears to be a negligent person, as, he had issued notice to

the accused Akhlak Ahmad @ Saleem Ahmad, as, witness, whereas, Akhlak Ahmad is accused in this case and on calling him, Assistant Ahlmad Amit Kumar has failed to give any good reason for his such negligence, so, he is warned to remain vigilant in future.

6. I have heard the Ld. Counsels for the parties on the applications u/s. 311 of CrPC.

7. Ms. Sangeeta Jain, Ld. Counsel for the accused Kamar Ali and Mehboob has submitted that on dated 05.2.2020, she had filed an application u/s. 311 of CrPC on behalf of her clients for recalling the PW-2 Manoj Soni and submitted that on dated 18.12.2019, examination-in-chief of PW-2 was concluded, but, on that day, she remained busy in some other courts and thereafter, in the year 2020, Covid spreaded. She has further submitted that thereafter, in the year 2021, her husband had expired, so, the said application filed by the accused Kamar Ali and Mehboob u/s. 311 of CrPC could not be pressed upon and submitted that the said application may be allowed and PW-2 Manoj Soni may be recalled for his cross-examination.

8. Sh. A. K. Singh, Ld. Counsel for the accused Dal Chand has also submitted that this accused Dal Chand had filed an application u/s. 311 of CrPC for recalling the PW-2 on dated 18.12.2019 itself, but, it could not be pressed upon and submitted that cross-examination of PW-2 is essential for proper

adjudication of the present case, as, he is the complainant in the present case. He has also submitted that he has also filed another application u/s. 311 of CrPC today for recalling the PW-2 on behalf of the accused Arif and Akhlaq and submitted that since, PW-2 is the complainant, so, his cross-examination is essential and submitted that application filed on behalf of the accused Dal Chand on dated 18.12.2019 and another application filed on behalf of the Arif and Akhlaq today itself may be allowed.

9. On the other hand, Sh. F. M. Ansari, Ld. Addl. PP for the State has vehemently opposed these applications and submitted that part examination-in-chief of PW-2 was recorded on dated 05.9.2014 and thereafter on dated 30.11.2016 and thereafter on dated 03.6.2019 and his examination-in-chief was concluded on dated 18.12.2019, but, the Ld. Counsels for all the accused had failed to appear till 2:45 PM to cross-examine this witness, so, the Ld. Predecessor of this court was pleased to close the opportunity of all these accused to cross-examine PW-2. He has also submitted that since, these applications were not pressed upon by the accused or their counsels for number of years together, so, no ground is made out to allow these applications and prayed for dismissal of these applications.

10. I have given thoughtful consideration to the submissions made by the Ld. Counsels for the accused Kamar Ali, Mehboob, Dal Chand, Arif and Akhlaq and Ld. Addl. PP for

the State and perused the record.

11. The perusal of the record reveals that this case was registered way back in the year 2012 and part examination-in-chief of PW-2 Manoj Soni was recorded on dated 05.9.2014, 30.11.2016 and 03.6.2019 and examination-in-chief of PW-2 was concluded on dated 18.12.2019, but on dated 18.12.2019, the counsels for all the accused failed to appear before the court of my Ld. Predecessor since 10:00 AM till 2:45 PM to cross-examine the PW-2, so, the Ld. Predecessor of this court was pleased to close the opportunity of all these accused to cross-examine PW-2.

12. The perusal of the record also reveals that the accused Kamar Ali and Mehboob had filed the application u/s. 311 of CrPC for recalling the PW-2 on dated 05.2.2020 and accused Dal Chand had filed such application u/s. 311 of CrPC on dated 18.12.2019 and since then, the said applications were not pressed upon by the counsels for these accused.

13. Today, Sh. A. K. Singh, Advocate has filed today similar application u/s. 311 of CrPC for recalling the PW-2 on behalf of the accused Arif and Akhlaq.

14. Since, this case was registered way back in the year 2012 and accused are facing serious charges u/s. 395/397/412/120-B/34 of IPC and Sec. 25 of Arms Act and despite of the fact that Sh. Manoj Soni (PW-2) is the complainant, all accused

failed to call their counsels to cross-examine the PW-2 on dated 18.12.2019 till 2:45 PM. So, all these accused and their counsels appear to be negligent persons, but, at the same time, this court is of the considered opinion that to bring the truth before this court, cross-examination of PW-2 is essential, so, the applications filed by the accused Akhlaq, Arif, Kamar Ali, Mehboob and Dal Chand stand allowed, but, subject to fine of Rs.5000/- on each of these applicants/accused, which is to be deposited in this court within 20 days from today.

15. **Notice to witness Manoj Soni (PW-2) is ordered to be issued for the next date of hearing only on the depositing of the fine amount by the accused Akhlaq, Arif, Kamar Ali, Mehboob and Dal Chand within 20 days from today.**

16. Since, no other PW is present, except the IO and the MHC(M). IO is to be examined after examination of other witnesses of the prosecution.

17. Accordingly, the matter stands adjourned for evidence of the prosecution. To come upon **19.4.2024**. IO and MHC(M) are also ordered to be summoned for the next date of hearing.

(PAWAN KUMAR MATTO)
Addl. Sessions Judge (Special Judge NDPS)
North East/KKD Courts/Delhi/12.3.2024