

SC 558/2021
STATE Vs. MOHD. JAMIL @ BABBAN
FIR NO.489 /2019
PS PREM NAGAR

19.01.2023

Present: Sh. Shiv Kumar-I, Addl.PP for the State .

Accused produced from JC

Sh.Amandeep Singh, Ld. counsel for the complainant.

Sh. Deepanshu Chugh, Ld. Defence counsel for the accused.

No PW present.

ld. Counsel for the accused has moved an application U/s 311 Cr.P.C. seeking permission to recall of PW1 Mehtab Safi for his cross-examination.

The application says that matter was listed for cross-examination of PW on 18.11.2022, however, ld. Counsel for the accused could not appear on that date due to personal difficulty.

The application is strongly opposed by the Ld. Addl. PP for the State. While making his counter submissions, ld. APP for the state has invited attention of the court towards section 309 Cr.P.C. which provides that when witness is in attendance, no adjournment or postponement shall be granted in examining them except for the special reasons to be recorded in writing. ld. APP has also submitted that non appearance of

(2) STATE Vs. MOHD. JAMIL @ BABBAN

counsel without any justifiable reason is not a ground for either adjourning the matter or for recalling the witness. Here, in this case, neither the specific reason for non appearance of Ld. counsel was disclosed on 18.11.2022 when the witness was present for cross-examination nor the same has been mentioned in the application in hand.

Submissions heard. Record perused.

Perusal of record reveals that witness PW1 Mehtab Safi had appeared for his examination on 01.10.2022. He was examined in chief on that day. However, the cross-examination was deferred subject to cost of Rs.1,500/- at request of proxy counsel as main counsel of accused was not available on that day. On next date of hearing i.e. on 18.11.2022, neither the cost was paid nor counsel for the accused appeared. Accordingly, the opportunity for cross-examination was closed. Perusal of the application in hand would reveal that the applicant/ accused has taken a general and ambiguous ground for recalling the witness that his counsel was not available due to personal difficulty. The said personal difficulty has again not been elaborated.

Moreover, Ld. Counsel for the complainant/ witness has submitted that accused party is advancing threats to the witness after recording of his examination in chief in the Court. Ld. Counsel has also submitted that cross-examination of witness was deliberately not conducted earlier because the accused party was trying to influence and intimidate the witness to change his statement in cross-examination.

(3) STATE Vs. MOHD. JAMIL @ BABBAN

Thus, neither any justifiable reason has been mentioned for not cross-examining the witnesses earlier nor the allegations of threats have been explained.

Under the circumstances, this court is not inclined to recall the witness Mehtab Safi for his cross-examination.

The application stands dismissed.

Summons issued to Dr. Ashish received back with the report that he is no more working with SGM hospital.

Let the fresh summons be issued in the name of concerned CMO who shall depute some other doctor to identify the signatures of Dr. Ashish on the medical documents.

Directions are issued to the ahlmad to annex copy of MLC with summons.

A telephonic information has been received from Dr. Beena that she would not be able to appear today due to emergency duty in hospital. She is exempted for today. Fresh summons be issued to her for NDOH.

Put up for PE on **05.04.2023 at 2 p.m.**

**(BABRU BHAN)
ADDL.SESIONS JUDGE-03,
NORTH WEST DISTT,
ROHINI COURTS
DELHI/19.01.2023**