

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

02.11.2023

Present: Sh. Sanjay Jindal, Ld. Addl. Public Prosecutor for the State.
Accused Babban produced from JC.
Accused Ikrar Babu expired.
Sh. Sanjay Mandawat and Sh. Sidharth Gupta, Ld. counsel for the accused.
PW Raman Kumar, Record clerk , SGM Hospital is present.

Dr. Beena is present.

The MLC already Ex.PW3/A was prepared under supervision of Dr. Beena. As per record, MLC was got collected by the IO through Ct. Karambir. Neither the original MLC has been filed on record by the IO nor it is clear from the report that who had given the subsequent opinion. IO is being summoned in the court to furnish the clarification in this regard but he is not appearing since last two dates of hearing despite directions issued in this regard.

Let a notice U/s 350 Cr.PC be issued against IO Inspector and an explanation be called as to why he should not be punished under the aforesaid provision.

Also Issue bailable warrants against IO in the sum of Rs.10,000/- for the NDOH.

An application u/s 311 Cr.P.C. has been moved on behalf of the accused for recalling Mehtab Safi /PW1 for his cross-examination. The application says that opportunity for cross-examination was closed by this court vide order dt.

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18.11.2022. Ld.Counsel has sought to explain that Ld.Counsel for the accused had gone to Tishazari and there was some miscommunication, therefore, the counsel could not appear due to the same.

Application is opposed by Ld. Addl. PP for the State. Ld. APP has submitted that ample opportunities have already been given but the cross-examination has not been conducted despite given opportunities. Ld. APP has raised the contention that present application has been moved just to delay the proceedings.

Submissions heard. Record perused.

The case file would reveal that examination in chief of PW1 Mehtab Safi was concluded on 01.10.2022. proxy counsel for the accused was present in the court and sought adjournment stating that main counsel was not available that day. Court accepted the submissions made by Ld. Proxy Counsel for the applicant and granted opportunity subject to cost of RS.1,500/-. On next date of hearing i.e. 18.11.22, neither the counsel for the applicant/ accused had appeared nor the cost was paid. Accordingly, this court closed the opportunity.

On 19.01.2023, an application moved u/s 311 Cr.P.C. was dismissed by this court but on 05.04.2023, one opportunity was granted subject to cost of RS.5,000/- .

On 15.07.2023, PW Mehtab Safi was present but again counsel for the accused did not appear. An intern who appeared on his behalf sought adjournment stating that counsel

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had gone to Tis Hazari. Needless to say that cost of Rs.5,000/- was also not paid. Thereafter, now again this application has been moved. Perusal of application would reveal that no justifiable and coherent ground for non appearance of counsel has been disclosed.

Record further shows that Mehtab Safi/PW1 has repeatedly appeared for his cross-examination but neither the cost imposed was ever paid nor the cross-examination was conducted. This court is conscious that cross-examination is most valuable right of accused and a fair opportunity should be given for the same. But that right of cross-examination cannot be permitted to be used as an instrument of harassment of the witness. The applicant/ accused in this case is no doubt misusing the legal procedure to inflict harassment on the complainant witness PW1.

In view of the conduct noted above, although no ground is made out but taking note of the serious allegations, this court is of the considered opinion that irrespective of his conduct, if opportunity for cross-examination of complainant is not granted to the applicant/ accused , it may result into irreparable loss to the applicant. However, since PW1 has repeatedly appeared, due to the conduct of the applicant, the applicant should deposit a cost of RS.10,000/- as a condition precedent of summoning of PW 1 Mehtab Safi. Accordingly, application is allowed subject to cost of RS.10,000/-.

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It is clarified that summons shall be issued only after deposition of cost of RS.10,000/- in the court, within seven days. The cost shall be released to Mehtab Safi , as per procedure.

Put up for PE on **06.02.2024.**

Witnesses present today are discharged unexamined for today only.

**BABRU BHAN
ADDL.SESIONS JUDGE-03,
NORTH WEST DISTT,
ROHINI COURTS
DELHI/ 02.11.2023**