

6 SC 260/2019
STATE Vs. DEEPAK SINGH & ORS.
FIR No. 100/2019
PS Bhajan Pura

17.03.2025

Present: Sh. Kamal Akhter, Id. Addl. PP for the State.
Ms. Ifat Sultana, Id. Counsel for the accused persons along
with accused Deepak Singh and Rahul.
Sh. Vinod Kumar Singh, Id. Counsel for the complainant.

In pursuance of the order dated 03.02.2025, the IO/SHO concerned has filed the DVR qua the death of accused Vijay Laxmi. Same is taken on record.

Perusal of the report reflects that accused Vijay Laxmi had expired on 21.12.2024. The copy of the duly verified death certificate issued by MCD is filed along with the report.

Considering the DVR, the proceedings qua accused Vijay Laxmi stands abated.

The Ld. Counsel for the accused persons has moved an application u/s 348 BNSS, 2023, seeking recalling of PW-4 Dr. Pankaj Malya, who was examined and discharged as a witness on 23.01.2024. The said application is separately registered as I.A. NO. 23/2025.

Issue notice of the present application to the State.

Ld. Addl. PP for the State accepts notice and he has submitted that he would not be filing a reply to the said application and would straight away argue the same.

It is submitted by the Ld. Counsel for the accused persons that PW4 Dr. Pankaj Malia had conducted the postmortem of the dead body of the deceased and his testimony is of paramount importance not only to the case of the prosecution, however, for the defense as well. The said witness could not be cross examined on 23.01.2024, since the main

counsel was not available on that day due to ill health, as she was suffering from viral fever and the Ld. Proxy Counsel was not conversant with the facts of the present case. The accused persons had duly moved an application seeking adjournment on the ground of ill health of the Ld. Defense Counsel, however, the said application was not considered by the Ld. Predecessor of this Court and the same was dismissed and the witness was examined and discharged after recording his cross examination as “Nil. Opportunity given.” It is further submitted by the Ld. Counsel for accused persons that the defense of the accused persons shall suffer an irreparable harm if the present application is not allowed and PW4 Dr. Pankaj Malia is not cross examined by the accused persons.

On the contrary, it is submitted by the Ld. Addl. PP for the State that the present application has been moved belatedly after more than 14 months have elapsed, since, PW4 was examined and discharged on 23.01.2024. The present application is nothing but an abuse of the process of law and the accused persons are trying to delay the trial and therefore, the present application is strongly opposed by the State.

After considering the rival contentions, since, PW4 Dr. Pankaj Malia is a material witness and he had conducted the postmortem of the dead body of the deceased, therefore, the accused persons must be given the right to cross examine the said witness. In the present case, the prosecution has cited more than 25 witnesses, till date only 15 witnesses have been examined and there is no merit in the submissions made by Ld. Addl. PP for the State that the sole purpose of the present application is to cause unnecessary delay in the trial.

Therefore, the present application is hereby allowed, subject to the accused persons bearing the cost of the diet money, to be paid to the witness on the NDOH.

Summons sent to PW Dr. Pankaj Jha received back duly served. Be awaited for his appearance.

PW-16 Dr. Pankaj Jha has been examined, cross examined and discharged.

Notice issued to MS, Max Hospital, Patparganj received back unserved with the report that when Process Server HC Rajveer Singh went to Max Hospital for getting the process served, the HR office of the said hospital refused to accept the notice and the Process Server was informed verbally that their hospital was not having any record pertaining to the residential address and contact details of Dr. Manish Vaish, Dr. Hrishikesh Chakravarti and Dr. Y.S. Bundela. When the Process Server asked the concerned official from the HR Department of Max Hospital, to give the report in writing, he was refused and turned away from the hospital.

Perusal of the record reflects that on the last date of hearing, the MS, Max Hospital had sent one Mr. Akash Singh, HR, Max Hospital to depose on behalf of Dr. Manish Vaish, Dr. Hrishikesh Chakravarti and Dr. Y.S. Bundela, however, his testimony was not recorded on 03.02.2025, since the further efforts to trace out the concerned doctors were made and it was specifically directed through the notice issued to MS, Max Hospital, that in case the details of the concerned doctors was not provided, then he was directed to remain present in person today.

In spite of specific directions, the MS, Max Hospital refused to provide a written report regarding the details of the aforementioned doctors and he has chosen to not appear before this court personally today.

Issue bailable warrants against MS, Max Hospital through DCP concerned, for a sum of Rs.5,000/- and one surety of like amount, returnable for the next date of hearing.

Issue show cause notice u/s 350 Cr.P.C., 1973 against MS, Max Hospital, as to why the summary proceedings under the said provision be not initiated against him and as to why he should not be

convicted under the said section, to be executed through DCP concerned, returnable for the next date of hearing.

Let fresh summons be issued to PW4 Dr. Pankaj Malia (Recalled u/s 348 of BNSS, 2023) through IO/ SHO concerned for the next date of hearing.

Now to come up for PE **21.04.2025.**

(ATUL AHLAWAT)
ASJ (FTC)/North-
East/KKD Courts/
Delhi/17.03.2025