

IA35/2025 (Haseen @ Mullaji @ Salman)

CNR No. DLNE01-002410-2020

SC No. 120/20

State v. Mohd. Tahir Hussain etc.

FIR No. 65/20

PS Dayalpur

19.03.2025 (At 10:29 AM)

Present: **Sh. Madhukar Pandey (appearing through V/C)**, ld. Special PP for State along with his Associate **Sh. Daksh Sachdeva, Adv.**
PO/Insp. Priyanka in person.
Sh. Sikander, ld. counsel for applicant/accused Haseen @ Mullaji.

1. File taken up with an application moved u/s. 348 BNSS, on behalf of accused Haseen @ Mullaji, thereby seeking recall of PW24/Sh. C.P. Singh for his further cross-examination. Reply to this application has been filed by Insp. Priyanka.
2. Submissions heard on this application as made by both the counsels. In nut-shell, this application has been filed on the grounds that on 22.01.2025 when PW24 was put up for cross-examination by the counsel for applicant herein, this witness was cross-examined during pre-lunch session, but one another case was listed before Hon'ble High Court of Delhi on same day during post-lunch session. Therefore, the cross-examining counsel had to rush to Hon'ble High Court of Delhi to attend that case.
3. In the reply, application has been contested on the grounds that the application has been moved ignoring the mandate of law u/s. 346 BNSS, which specifically provides that an Advocate of a party being engaged in another court, shall not be a ground for adjournment. It was also argued by ld. Special PP that it had been same approach of the counsel of the applicant in the past also, so as not to appear during the hearing of the case on the grounds of being busy in other court. It was also pointed out that vide order

dated 20.01.2025 Hon'ble Supreme Court directed this court to take all the steps to conclude the trial within six months and all the parties were directed to endeavor for completion of the trial without seeking unnecessary adjournment.

4. I have perused the record. PW24/Dr. C.P. Singh is an expert from FSL, Rohini, who was initially examined in this case on 16.01.2025. However, on that day he was not cross-examined by counsel for applicant herein because one Associate counsel Mohd. Hasan sought adjournment on the grounds that senior counsel Mr. Pracha was unable to appear before the court due to death of a close person to him. Thus, on 22.01.2025 PW24 was called again solely for the purpose of his cross-examination by the counsel for applicant herein and during pre-lunch session Mohd. Hasan and Sh. Jatin Bhat, both ld. counsels for the applicant cross-examined this witness, which was not concluded by them. Accordingly, matter was taken up in post-lunch session, but Mohd. Hasan, ld. counsel for applicant sought to defer further cross-examination for some other day, which was declined by the court. Mohd. Hasan refused to further cross-examine this witness. The cross-examination of PW24 was closed in those circumstances.
5. It cannot be assumed that the counsels for the applicant herein are not aware of directions given by Hon'ble Supreme Court in the order dated 20.01.2025, which was passed in respect of this case itself.
6. Moreover, S.348 BNSS cannot be read in ignorance to the mandate of law as provided in S.346 BNSS, which explicitly provides that Advocate of party being engaged in other court shall not be a ground for adjournment and that where a witness is present in court, but the party or his Advocate is not present; or party or his Advocate though present in court, is not ready to

examine or cross-examine the witness, the court may pass such orders thereby dispensing with the examination-in-chief or cross-examination of the witness, as the case may be. {S.346 (2) (c) & (d)}. It cannot be scheme of law that one law shall be enacted to override the effect of another law of same Statute and therefore, S.348 BNSS cannot be invoked, when a case was dealt with in accordance with S.346 BNSS.

7. Moreover, from the ordersheet of the case pending before Hon'ble High Court of Delhi on 22.01.2025, it is well apparent that Mr. Mehmood Pracha was himself appearing before Hon'ble High Court of Delhi and had there been sufficient willingness on the part of counsels, Mohd. Hasan or Mr. Jatin Bhat or other Associate counsels for the applicant, could have completed cross-examination of PW24 before this court on that day. Apparently Mr. Pracha was taking care of the case before Hon'ble High Court of Delhi. Even otherwise counsels are expected to manage among themselves, when they accept a case, while having other cases also pending for hearing.
8. Therefore, it is not matter of a reason beyond control of the counsels of the applicant, rather it is a situation of a voluntary option taken out of their sweet will in ignorance of the mandate of law and directions given by Hon'ble Supreme Court in this case, by the counsels for the applicant. Hence, I do not find any merit in the application and accordingly, same is rejected.

(PULASTYA PRAMACHALA)
ASJ-03(NE)/KKD Courts/Delhi
19.03.2025