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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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*Judgment reserved on: 06.05.2026**Judgment pronounced on: 25.05.2026**Judgment uploaded on: 30.05.2026*+ **CRL.REV.P. 86/2024****SANJAY KUMAR JHA**

.....Petitioner

Through: Mr. Jitendra Kumar Jha, Mr.
Jitender Rathi, Mr. Aniket
Kumar and Mr. Sumti Jha,
Advocates

versus

THE STATE (NCT OF DELHI) AND ORS.Respondents

Through: Mr. Manoj Pant, APP for the
State with SI Karan Singh, P.S
Lodhi Colony

CORAM:**HON'BLE DR. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****DR. SWARANA KANTA SHARMA, J**

1. By way of this petition, the petitioner seeks setting aside of the order dated 13.07.2023 [hereafter '*impugned order*'], passed by the learned Additional Sessions Judge (FTSC), POCSO Act, South-East District, Saket Court, New Delhi in case arising out of FIR bearing No. 24/2016, registered at Police Station Lodhi Colony, Delhi for the commission of offence punishable under Sections 354/354A/354D of the Indian Penal Code, 1860 [hereafter '*IPC*'] and Section 10/12 of



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the Protection of Children from Sexual Offences Act, 2012 [hereafter '*POCSO Act*'].

2. The brief facts of the present case are that a complaint was lodged by five female students of X Senior Secondary School alleging inappropriate sexual conduct on the part of the petitioner herein, Sanjay Kumar Jha, who was their Accountancy and Business Studies teacher in the said school. It has been alleged by the complainants that the petitioner used to behave in inappropriate and objectionable manner with them and would make unwarranted remarks and gestures towards them. It was alleged that the petitioner used to call them to separate rooms, make indecent remarks, and used to inappropriately touch them. The complainants have further alleged that the petitioner used to give gifts and friendship bands to them. It has been further alleged that the petitioner used to ask them to accompany him on dates and used to boast about his financial status, stating that he earned a salary of Rs. 60,000/- and could spend money on them. The complainants alleged that the petitioner threatened them with adverse academic consequences, including failing them in examinations despite their papers having been properly written, if they did not comply with his demands. The allegations further reveal that the petitioner used to humiliate and abuse them in the classroom, follow them outside the school premises, and used to pressurize them by claiming that he was a very influential person and could secure government jobs for them. According to the complainants, such acts had been continuing for approximately one and a half years. On the



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basis of these allegations, the present FIR was registered.

3. Upon completion of the investigation, charge sheet was filed on 31.01.2016. Subsequently, *vide* order dated 02.09.2016, charges were framed against the petitioner for commission of offences under Sections 354, 354A and 354B of the IPC, as well as Section 10 of the POCSO Act.

4. During the trial, examination in chief of PW-1 (Ms. 'R') and PW-2 (Ms. 'KA') was recorded on 21.03.2017 and they were cross-examined on 15.12.2017, whereas PW-4 (Ms. 'P') was examined and cross-examined on 02.02.2018. The petitioner had, thereafter, moved an application on 17.02.2023 under Section 311 of the Cr.P.C., seeking three reliefs. *Firstly*, the petitioner sought permission to summon four students of Class XI-A as defence witnesses, who were studying in the same class as the complainants at the relevant time. *Secondly*, the petitioner sought the summoning of Mr. Balinder Singh, a teacher of the same school, who was the allottee of the cabin where the alleged incidents were stated to have taken place. *Thirdly*, the petitioner sought recall of PW-1, PW-2 and PW-4 for further cross-examination on the ground that their statements recorded before the Principal of the school on 20.01.2016 were neither exhibited nor put to the witnesses during their cross-examination. The learned Trial Court, *vide* impugned order dated 13.07.2023, partly allowed the said application to the extent of permitting four students of the concerned class to be summoned as defence witnesses. Insofar as prayer seeking



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the recall of Mr. Balinder Singh was concerned, the same was not pressed by the petitioner. However, prayer seeking recall of PW-1, PW-2 and PW-4 for further cross-examination, was dismissed by the learned Trial Court *vide* impugned order.

5. Aggrieved by the aforesaid order, the petitioner has approached this Court seeking recall of PW-1, PW-2 and PW-4 for further cross-examination, contending that their statements recorded before the Principal of the school on 20.01.2016 were neither exhibited nor were they put to the witnesses during their cross-examination, for the purpose of confronting them with the same.

6. The learned counsel appearing on behalf of the petitioner argues that the recall of PW-1, PW-2 and PW-4 is necessary, since these witnesses had made complaints against the petitioner before the Principal of the school prior to the registration of the present FIR, and the allegations contained therein do not corroborate the allegations subsequently levelled in the FIR. It is further contended that although the said complaints were part of the chargesheet, the same were never exhibited during trial and, therefore, the witnesses were not confronted with those complaints during the course of their cross-examination. The learned counsel submits that in case, the present petition is not allowed, serious prejudice would be caused to the petitioner, resulting in grave injustice to him. Thus, it is prayed that the present petition be allowed.

7. *Per contra*, the learned APP appearing for the State submits



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that PW-1 and PW-2 were examined in the year 2017, whereas PW-4 was examined in the year 2018. It is submitted that the present application seeking recall of PW-1, PW-2 and PW-4 has been moved after an inordinate delay of nearly six years, at a stage when the matter is already fixed for defence evidence. It is further contended that the petitioner had adequate and fair opportunity to cross-examine the witnesses, particularly when the complaints in question formed part of the chargesheet from the very inception. Therefore, at this belated stage, the petitioner cannot be permitted to seek recall of the witnesses merely to fill up lacunae in the defence case. The learned APP further submits that it is well settled that the discretion under Section 311 of the Cr.P.C. is to be exercised sparingly and with great caution, particularly in cases involving minor victims. Accordingly, it is prayed that the present petition be dismissed.

8. This Court has **heard** arguments addressed by the learned counsel for the accused-petitioner as well as the learned APP for the State, and has perused the material available on record.

9. Before proceeding to examine the rival contentions, it would be appropriate to first look into Section 311 of the Cr.P.C, which reads as follows:

“311. Power to summon material witness, or examine person present.— Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears



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to it to be essential to the just decision of the case.”

10. The law is well-settled that a Court has broad discretionary powers to summon, examine, recall, or re-examine any person in order to find out the truth and reach a just and proper decision in the matter, while dealing with an application filed under Section 311 of Cr.P.C., since it is the Court’s duty to ensure that there is no miscarriage of justice due to denial of fair opportunity to any party before it. *However*, at the same time, it is also well-settled by way of catena of judicial precedents of the Hon’ble Supreme Court, that the discretion under Section 311 of Cr.P.C., for allowing recall or re-examination of a witness, is to be invoked judiciously, cautiously, and with due circumspection, and not in a routine, arbitrary or capricious manner. Such discretion must be exercised in light of the facts and circumstances of each case, while carefully balancing the considerations of fairness, avoidance of unnecessary hardship to witnesses, and prevention of undue delay in the trial proceedings.

11. Further, it has to be taken into consideration that the witnesses which are sought to be recalled in the present case by the petitioner, were minors at the time of commission of the alleged offence, and therefore the mandate of Section 33(5) of the POCSO Act assumes significance in the present case, as the said provision prohibits the Special Court from repeatedly summoning the child victim to testify before the Court. The said provision reads as follows:

“33(5) The Special Court shall ensure that the child is not



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called repeatedly to testify in the court.”

12. Therefore, in this Court’s opinion, while entertaining and adjudicating an application under Section 311 of the Cr.P.C. seeking recall of a victim in a case involving commission of offence under the POCSO Act, where the embargo contained in Section 33(5) of the POCSO Act is attracted, the Court is required to draw a balance between the mandate of both these provisions, considering the facts and circumstances of each case.

13. In this regard, the Hon’ble Supreme Court in ***Madhab Chandra Pradhan & Ors. v. State of Odisha: 2024 SCC OnLine SC 6131***, has held as under:

“5. We are of the considered opinion that although Section 33 (5) would not act as an absolute bar to recall the victim for reexamination as a witness, each case must be looked at in the context of its individual facts and circumstances. Thus, the question which falls for our consideration in the present case is whether in the exercise of its powers under Section 311 of the Cr.P.C, the Special Court ought to have recalled the child/victim for re-examination as witness, keeping in mind the mandate under Section 33 (5) of the Act.

6. The principles which would guide the exercise of a Court’s power under Section 311 of the Cr.P.C were succinctly summed up by this Court in ***State (NCT of Delhi) v. Shiv Kumar Yadav (2016) 2 SCC 402***. It was laid down by this Court that first, the plea for recall of a witness under Section 311 must be bona fide and genuine. Secondly, applications for recall of a witness under Section 311 should not be allowed as a matter of course and the discretion given to the Court must be exercised judiciously, not arbitrarily.”

14. This Bench in ***Rakesh v. State of NCT of Delhi: 2023 SCC OnLine Del 4774***, also observed that the rights of an accused under



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Section 311 of Cr.P.C. must be carefully balanced with the statutory protection afforded to a child witness under Section 33(5) of the POCSO Act. It was also held that the power to recall a witness is required to be exercised judiciously and with due sensitivity, especially in matters involving allegations of sexual offences. The relevant observations, insofar as they are relevant for the present case, are reproduced hereunder:

“10. While the bar under Section 33(5) POCSO Act may not be absolute and balance of rights needs to be maintained under Section 33(5) of POCSO Act and Section 311 of Cr. P.C., at the same time, the Court's discretion in exercising its power to re- summon a witness for cross-examination has to be exercised with circumspection, caution and utmost sensitivity. The crucial word used in Section 33(5) of POCSO Act is "called repeatedly". This Section thus has to be interpreted to balance and applied with the right under Section 311 Cr. P.C. of accused and right to fair trial of an accused depending on facts and circumstances of each case.

19. The trial in this case has already been prolonged to seven years and the application under Section 311 Cr.P.C. was filed after almost six years of recording of testimony of the witnesses concerned. All this while, for the six years, when the testimony of other witnesses was being recorded, there was no whisper from the side of the accused/accused to recall the present witnesses. The present revision petition as well as application filed under Section 311 Cr.P.C. before the learned Trial Court thus seems to be an attempt to delay the trial, which is already delayed.

20. Learned counsel for the accused also argued that in case the present petition is not allowed, it will amount to violation of right of fair trial to the accused/accused.

21. While this Court cannot dispute that the right to fair trial is a crucial and precious right of the accused, so is the complainant's right to a fair trial which requires that they should not unnecessarily be harassed, especially in the cases of sexual assault-. This Court notes that at times, people may not



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even report such cases of sexual assault of children of tender age as in this case, she was only seven years of age for fear of being harassed by continuous visits to the Courts or fear of embarrassment and traumatic cross-examination. It would have been a different decision in case the record would have revealed that the witnesses' cross-examination consisted of only asking few formal questions and not of the incident, but in the present case, to the contrary, as already observed above, the cross-examination had been conducted at length and all relevant aspects had been covered by the previous counsel for the accused. In view of the same, though the accused has to be granted and ensured a fair trial, it cannot mean being afforded unjustified repeated opportunities of cross-examination in every case to indicate fair trial. The case of an accused has to be meritorious where a relief as prayed for in the present case, can be granted.

22. The other contention that in case the present application is not allowed, the case may end into conviction is also without merit since, at the cost of repetition, it is to be taken note of that the previous counsel has cross-examined the witnesses at length and only due to apprehension or fear of the accused that cross-examination did not result in answers that would have helped him, cannot be a ground to recall the witnesses after six years of conclusion of their testimony.

23. While balancing the right of the accused to a fair trial and upholding the intent of the legislation, the courts are duty bound to remain sensitive to the plight of the seven-year-old sexual assault victim. She and her mother cannot be recalled to relive the entire trauma only because the new counsel is dissatisfied with the elaborate cross-examination of these witnesses. Thus, this Court also has a duty to ensure an expeditious and fair trial, preventing misuse of such applications for delaying the proceedings before the learned Trial Court..."

15. Adverting to the factual matrix of the present case, it would first be relevant for this Court to note that PW-1 and PW-2 had got their statements recorded before the Principal of the school in question on 20.01.2016, along with other victim girls. However, as



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borne out from the material available on record, including the Trial Court Record and the copies of such statements filed along with the present petition itself as Annexure F, no such statement of PW-4 was ever recorded before the Principal of the school. Therefore, the question of recalling PW-4 on the said ground does not arise.

16. As far as the first ground taken by the petitioner, i.e., that the complaints/statements dated 20.01.2016 made by the witnesses before the Principal prior to registration of the present FIR were not exhibited and, therefore, not put to PW-1 and PW-2 during the course of their cross-examination, is concerned, this Court notes that the said complaints/statements formed part of the chargesheet from the very inception and were within the knowledge and access of the petitioner. At this stage, the petitioner cannot contend that merely because the said complaints were not formally exhibited at the time of recording of their examination-in-chief, they could not have been referred to during the cross-examination of the witnesses. Further, the learned Trial Court has rightly observed that merely because certain statements were not put to the witnesses during cross-examination does not confer an indefeasible right upon the petitioner to seek recall of the child witnesses, particularly when Section 33(5) of the POCSO Act places a restriction on repeated summoning and examination of child witnesses.

17. It is also pertinent to note that PW-1 and PW-2 were summoned for recording of their examination-in-chief and cross-



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examination on two occasions, i.e., on 21.03.2017 and 15.12.2017. Adequate and fair opportunity was granted to the learned counsel for the petitioner to cross-examine all the witnesses. Despite the complaints in question being available on record, no questions pertaining thereto were put to the witnesses during their cross-examination. The learned Trial Court has also rightly noted that the application under Section 311 of Cr.P.C. was filed nearly six years after the examination of the witnesses. At this stage, the petitioner's conduct appears to be an attempt to delay the proceedings before the learned Trial Court. *Moreover, permitting recall of the witnesses would unnecessarily subject them to revisiting the trauma.*

18. It must further be borne in mind that the petitioner cannot be permitted to fill up lacunae in the defence case under the guise of Section 311 of Cr.P.C. The adjudication of an application under Section 311 of Cr.P.C. has to be guided by the test of the essentiality of the evidence sought to be adduced. The provision cannot be invoked merely to fill in the lacunae in the cross-examination when a fair and sufficient opportunity had already been provided to the petitioner for such cross-examination.

19. As far as the second ground urged by the learned counsel for the accused for recall of the witnesses that the complaints made before the Principal of the school do not contain the allegations subsequently levelled in the FIR, is concerned, this Court is of the opinion that upon perusal of the said complaints/statements, the



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allegations levelled in the FIR appear to be broadly consistent with the complaints/statements given to the Principal of the school. In any event, merely because there may be certain omissions or minor inconsistencies in the complaints and the FIR would not, by itself, justify recalling the witnesses, when the witnesses have remained consistent in their statements recorded under Section 164 of Cr.P.C., and in their testimony before the learned Trial Court.

20. Accordingly, this Court is of the considered opinion that no case is made out for recalling the witnesses once again, particularly when Section 311 of Cr.P.C is read in conjunction with the mandate of Section 33(5) of the POCSO Act, and when the witnesses have already been examined in detail.

21. Therefore, in view of the foregoing discussion, this Court finds no reason to interfere with the impugned order passed by the learned Trial Court. Accordingly, the present petition stands dismissed.

22. It is, however, clarified that nothing expressed hereinabove shall tantamount to an expression of opinion on the merits of the case.

23. The judgment be uploaded on the website forthwith.

DR. SWARANA KANTA SHARMA, J

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