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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Date of Decision: 12.08.2025*+ **CRL.REV.P. 312/2025**

MOHSIN KHAN

.....Petitioner

Through: Mr. Sumit Choudhary, Adv.

versus

STATE OF DELHI (THROUGH SHO PS NIHAL VIHAR)

.....Respondent

Through: Mr. Naresh Kumar Chahar,
APP for the State with Mr.
Chandrakant, Advocate.**CORAM:****HON'BLE DR. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****DR. SWARANA KANTA SHARMA, J (ORAL)****CRL.M.A. 23680/2025 (exemption)**

1. Allowed, subject to all just exceptions.
2. Application stands disposed of.

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3. By way of the present petition, the petitioner is seeking setting aside of the order dated 01.07.2025 [hereafter '*impugned order*'], passed by the learned Additional Sessions Judge, FTSC, POCSO, West District, Tis Hazari Courts, New Delhi [hereafter '*learned ASJ*'] in Sessions Case No. 4488/2024, arising out of FIR bearing no. 1190/2024, registered at Police Station Nihal Vihar, Delhi, for the commission of offences punishable under Sections 64(2)(F)/64(2)(M)/65(1) of the BNS, 2023 and Section 6 of POCSO



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Act, 2012 – *vide* which the application filed by the petitioner under Section 348 of BNSS, 2023 for recalling PW-10 Dr. Ankita Khandelwal and PW-12 IO/WSI Pinki for cross-examination was dismissed.

4. Issue notice. The learned APP accepts notice on behalf of the State.

5. The learned counsel appearing on behalf of the petitioner argues that that learned ASJ has dismissed the application filed by the petitioner without appreciating that further cross-examination of PW-10 and PW-12 is necessary for reaching just decision of the case. It is also stated that the application filed by the petitioner was not vague or cryptic and there were discrepancies in the testimony of PW-10 and PW-12 which require clarification to prevent miscarriage of justice. It is also stated that it is wrongly held that the witnesses have been cross-examined at length ignoring that the right of recalling witnesses is not limited by prior cross-examination but is intended to serve the ends of justice. It is also stated that the application was not filed to fill in the lacuna in defence of the revisionist.

6. The learned APP for the State, on the other hand, argues that the present case was registered under Sections 64(2)(F)/64(2)(M)/65(1) of BNS and Section 6 of POCSO Act. The allegations in this case were that the victim who was less than 13 years of age was repeatedly sexually assaulted by the accused due to which the victim child had conceived. The witnesses that the petitioner herein seeks to recall for cross-examination are PW-10 who is the doctor concerned



of Deen Dayal Upadhyay Hospital. The record reveals that PW-10 has only conducted the medical termination of pregnancy of the victim 'S' who was about 13 years of age, had sealed the samples of the fetus and had handed over them to the IO. The witness has been cross-examined by the counsel for the accused and the specific question has been asked that the sample was collected in a mechanical manner. PW-12 is the IO of the case who has been cross-examined at length by the learned counsel for the accused and a perusal of her testimony reveals that specific questions had been asked in the cross-examination to assail her testimony.

7. This Court has **heard** arguments addressed on behalf of both the parties and has perused the record.

8. The operative portions of order dated 01.07.2025 are set out below:

“5. A perusal of the file shows that the above said witnesses were cross-examined at length by the learned defence counsel, who has filed the present application. As rightly submitted by the learned Prosecutor, a witness cannot be recalled again and again just to fill in the lacuna. Further, the application is vague and cryptic. The defence has not even mentioned in the application as to what material questions are to be put which allegedly could not be asked.

6. I, therefore, do not find any merit in the application and the same is accordingly dismissed...”

9. In the present petition, as well as in the application filed before the learned Trial Court, the revisionist has merely stated that certain clarification is required, for which cross-examination of the witnesses is sought. However, neither in the petition filed before this Court, nor



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during the course of arguments, nor even in the application filed before the learned Trial Court, has the learned counsel for the accused specified the reasons necessitating such clarification, or indicated the nature of the clarifications that are sought from these witnesses. It is pertinent to note that PW-10 had only conducted the medical termination of pregnancy and thereafter sealed and transmitted the samples to the Investigating Officer. Likewise, in so far as the Investigating Officer is concerned, specific questions have already been put to him during cross-examination. Despite this, not a single concrete reason has been demonstrated in the petition or argued before this Court as to what further clarification is required from either PW-10 or the Investigating Officer so as to justify their recall.

10. Recalling a witness, especially in cases under the POCSO Act which are required to be tried expeditiously, cannot be permitted to be delayed by filing applications which disclose no cogent or justifiable reason for recalling such witnesses. In the present case, at the cost of repetition, it is to be observed that no single reason has been given except for a bald averment that certain clarifications regarding some discrepancies need to be highlighted. Such a vague assertion, without specifying the nature of the discrepancies or their relevance to the just adjudication of the case, cannot constitute a sound ground for allowing an application under Section 348 of the BNSS, as the specific purpose of the provision is to enable the Court to summon or recall witnesses whose evidence appears essential for



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arriving at a just decision in the case.

11. Furthermore, the power under Section 348 of the BNSS (erstwhile Section 311 of the Cr.P.C.) must be exercised for a legitimate and lawful purpose and not as a means to fill lacunae in the prosecution or defence, or to prolong the trial proceedings unnecessarily. While the provision indeed grants the Court discretion to ensure that the truth is brought on record and justice is achieved, it must be invoked cautiously and sparingly, so as to prevent delays, frivolous applications, or any kind of misuse.

12. In view of the foregoing discussion, this Court finds no infirmity in the reasoning or conclusion arrived at by the learned ASJ while dismissing the application under Section 348 of the BNSS. The impugned order dated 01.07.2025 has rightly noted that the application was vague, bereft of particulars, and aimed at recalling witnesses who had already been cross-examined at length, without disclosing any material basis for such recall. Permitting such an exercise would not only amount to allowing the defence to fill in lacunae but would also defeat the very objective of expeditious disposal of trials under the POCSO Act.

13. This Court thus is of the considered opinion that the present petition is devoid of merit and is accordingly dismissed.

14. The order be uploaded on the website forthwith.

DR. SWARANA KANTA SHARMA, J
AUGUST 12, 2025/zp