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IN THE HIGH COURT OF DELHI AT NEW DELHI

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**CRL.A. 413/2020**

GEETA ARORA @ SONU PUNJABAN .....Appellant

Through: Mr. Tanveer Ahmed Mir,  
Senior Advocate with Mr.  
Farooq Chaudhary, Ms.  
Meenakshi Joshi, Ms.  
Naahid Naasir, Ms. Ariana  
D. Ahluwalia and Ms.  
Yashodhara Singh, Advs.

versus

THE STATE (NCT) OF DELHI .....Respondent

Through: Mr. Ritesh Kumar Bahri,  
APP for the State with  
W/SI Pankaj Negi, Cyber  
Cell, Crime Br.

**CORAM:**

**HON'BLE MR. JUSTICE AMIT MAHAJAN**

**ORDER**

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**24.04.2025**

**CRL.M.A. 7206/2025**

1. By way of the present application filed under Section 391 of the Code of Criminal Procedure, 1973 ('CrPC'), the appellant seeks permission to take on record additional evidence comprising (i) the testimony of the prosecutrix recorded during the course of the separate trial proceedings against co-accused Jitender Kumar *alias* Lala, Rajpal and Virender Khanna *alias* Kala, and (ii) the custody certificate of the appellant dated 11.03.2022 issued by the concerned jail authorities.

2. The factual background necessary for adjudication is that the appellant/convict was convicted *vide* judgment dated 16.07.2020 for offences under Sections 366A/370/372/373/328/342/120B of the IPC and Sections 4/5/6



of the Immoral Traffic (Prevention) Act, 1956. The prosecution case is that the prosecutrix was trafficked through a chain of individuals, including the appellant.

3. During the course of the trial, however, proceedings *qua* co-accused Jitender Kumar, Virender Khanna and Rajpal were separated owing to their abscondence and subsequent arrest. Consequently, while the trial against the appellant culminated in her conviction, the trial against the co-accused proceeded independently and led to her conviction which is challenged in the present appeal.

4. During the continuing trial against the co-accused persons, the prosecutrix was examined and cross-examined afresh, and further testimonial material came on record. It is this testimony that the appellant now seeks to place on record, along with her custody certificate, to support her defence that she could not have trafficked the prosecutrix at the relevant time as she was already in judicial custody.

5. The learned senior counsel appearing for the appellant contends that the evidence sought to be introduced arises from the same FIR, involves the same victim, and relates to the same factual substratum. It is urged that the separation of trials was a procedural necessity and cannot prejudice the appellant's substantive rights. The testimonial account recorded in the continuing trial, coupled with the custody certificate, directly impacts the core allegations against the appellant. It is submitted that Section 391 of the CrPC permits the appellate court to take on record such additional material to ensure complete and effective adjudication of the pending appeal. Reliance is placed on the judgment of the Hon'ble Apex Court in ***Zahira Habibulla H. Sheikh v. State of Gujarat : (2004) 4 SCC 158*** to emphasize



that powers under Section 391 of the CrPC must be exercised liberally to advance substantive justice.

6. *Per contra*, the learned Additional Public Prosecutor ('APP') for the State vehemently opposes the application on the ground that the procedure under Section 33 of the Indian Evidence Act, 1872 ought to have been invoked, and that the prosecution's right to re-examine the prosecutrix has been foreclosed. It is contended that introducing such material at this stage would cause prejudice to the case of the prosecution. It is further argued that the custody certificate should have been proved through formal evidence.

7. At the outset, it must be emphasized that Section 391 of the CrPC empowers the appellate court to take additional evidence at any stage of the appeal, if it considers the same necessary in the interest of justice. The scope and amplitude of the powers under Section 391 of the CrPC have been repeatedly emphasized by the courts. In ***Zahira Habibulla H. Sheikh v. State of Gujarat*** (*supra*), the Hon'ble Apex Court observed that the appellate court is duty-bound to exercise its powers to do complete justice and must not allow procedural technicalities to come in the way of substantive rights. It was held as under :

*36. The principles of rule of law and due process are closely linked with human rights protection. Such rights can be protected effectively when a citizen has recourse to the courts of law. It has to be unmistakably understood that a trial which is primarily aimed at ascertaining the truth has to be fair to all concerned. There can be no analytical, all-comprehensive or exhaustive definition of the concept of a fair trial, and it may have to be determined in seemingly infinite variety of actual situations with the ultimate object in mind viz. whether something that was done or said either before or at the trial deprived the quality of fairness to a degree where a miscarriage of justice has resulted. It will not be correct to say that it is only the accused who must be fairly dealt with. That would be turning a Nelson's eye to the needs of the society at large and the victims or their*



*family members and relatives. Each one has an inbuilt right to be dealt with fairly in a criminal trial. Denial of a fair trial is as much injustice to the accused as is to the victim and the society. Fair trial obviously would mean a trial before an impartial judge, a fair prosecutor and atmosphere of judicial calm. Fair trial means a trial in which bias or prejudice for or against the accused, the witnesses, or the cause which is being tried is eliminated. If the witnesses get threatened or are forced to give false evidence that also would not result in a fair trial. The failure to hear material witnesses is certainly denial of fair trial.*

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**38.** *A criminal trial is a judicial examination of the issues in the case and its purpose is to arrive at a judgment on an issue as to a fact or relevant facts which may lead to the discovery of the fact issue and obtain proof of such facts at which the prosecution and the accused have arrived by their pleadings; the controlling question being the guilt or innocence of the accused. Since the object is to mete out justice and to convict the guilty and protect the innocent, the trial should be a search for the truth and not a bout over technicalities, and must be conducted under such rules as will protect the innocent, and punish the guilty. The proof of charge which has to be beyond reasonable doubt must depend upon judicial evaluation of the totality of the evidence, oral and circumstantial, and not by an isolated scrutiny.*

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**47.** *Section 391 of the Code is another salutary provision which clothes the courts with the power to effectively decide an appeal. Though Section 386 envisages the normal and ordinary manner and method of disposal of an appeal, yet it does not and cannot be said to exhaustively enumerate the modes by which alone the court can deal with an appeal. Section 391 is one such exception to the ordinary rule and if the appellate court considers additional evidence to be necessary, the provisions in Section 386 and Section 391 have to be harmoniously considered to enable the appeal to be considered and disposed of also in the light of the additional evidence as well. For this purpose it is open to the appellate court to call for further evidence before the appeal is disposed of. The appellate court can direct the taking up of further evidence in support of the prosecution; a fortiori it is open to the court to direct that the accused persons may also be given a chance of adducing further evidence. Section 391 is in the nature of an exception to the general rule and the powers under it must also be exercised with great care, especially on behalf of the prosecution lest the admission of additional evidence for the prosecution operates in a manner prejudicial to the defence of the accused. The primary object of Section 391 is the*



prevention of a guilty man's escape through some careless or ignorant proceedings before a court or vindication of an innocent person wrongfully accused. Where the court through some carelessness or ignorance has omitted to record the circumstances essential to elucidation of truth, the exercise of powers under Section 391 is desirable.

48. The legislative intent in enacting Section 391 appears to be the empowerment of the appellate court to see that justice is done between the prosecutor and the persons prosecuted and if the appellate court finds that certain evidence is necessary in order to enable it to give a correct and proper finding, it would be justified in taking action under Section 391.

49. There is no restriction in the wording of Section 391 either as to the nature of the evidence or that it is to be taken for the prosecution only or that the provisions of the section are only to be invoked when formal proof for the prosecution is necessary. If the appellate court thinks that it is necessary in the interest of justice to take additional evidence, it shall do so. There is nothing in the provision limiting it to cases where there has been merely some formal defect. The matter is one of discretion of the appellate court. As reiterated supra, the ends of justice are not satisfied only when the accused in a criminal case is acquitted. The community acting through the State and the Public Prosecutor is also entitled to justice. The cause of the community deserves equal treatment at the hands of the court in the discharge of its judicial functions.

50. In *Rambhau v. State of Maharashtra* [(2001) 4 SCC 759 : 2001 SCC (Cri) 812] it was held that the object of Section 391 is not to fill in lacuna, but to subserve the ends of justice. The court has to keep these salutary principles in view. Though wide discretion is conferred on the court, the same has to be exercised judicially and the legislature had put the safety valve by requiring recording of reasons.

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55. The courts, at the expense of repetition we may state, exist for doing justice to the persons who are affected. The trial/first appellate courts cannot get swayed by abstract technicalities and close their eyes to factors which need to be positively probed and noticed. The court is not merely to act as a tape recorder recording evidence, overlooking the object of trial i.e. to get at the truth. It cannot be oblivious to the active role to be played for which there is not only ample scope, but sufficient powers conferred under the Code. It has a greater duty and responsibility i.e. to render justice, in a case where the role of the prosecuting agency itself is put in issue and is said to be hand in glove with the accused, parading a mock fight and making a mockery of the criminal justice administration itself.



8. In the present case, the testimonial account of the prosecutrix sought to be introduced undeniably arises out of the same FIR. It pertains to the same victim and forms an integral part of the same chain of alleged trafficking events. The bifurcation of the trial into two proceedings was necessitated purely by administrative reasons due to the later arrests of the co-accused persons. It is not the fault of the appellant that she was tried earlier and separately, nor can she be prejudiced by the fortuitous circumstance that the co-accused persons were apprehended subsequently.

9. It is alleged against the appellant that she was part of a larger network involved in the trafficking of the prosecutrix, and that at a particular point in time, the prosecutrix came into her custody and was further exploited. The prosecution case, as laid before the learned Trial Court, involved a sequence of alleged transfers of the victim through various individuals, culminating in her being trafficked by the present appellant. The appellant was thereafter tried separately and convicted upon conclusion of evidence. However, during the subsequent trial of co-accused persons—who were apprehended and charge-sheeted later—the prosecutrix was examined afresh. In the course of her cross-examination therein, the prosecutrix deposed as follows:

*“It is correct that I know the difference between day, month and a year. The current year is 2022. I do not recall when the COVID-19 pandemic started. Manisha didi sent me to one uncle on Diwali on perhaps in 2010. Khushi sent me to Sonu on the Rakhi of 2011. I do not recall as to how long I was with Sonu.....”*

10. This testimony is now sought to be placed on record in support of the appellant’s defense.

11. It is the case of the appellant that the above statement of the prosecutrix, as recorded in the co-accused’s trial, now brings



into question the very foundation of the finding that she was in custody of the appellant during the relevant period. The appellant contends that this testimony contradicts, or at the very least casts serious doubt on, the version of events that led to her conviction—especially in light of the custody certificate dated 11.03.2022 which indicates that the appellant was in judicial custody during the said period. It is urged that the testimony, recorded in continuation of the same prosecutorial chain, has a direct and substantial bearing on the issues arising in the present appeal.

12. This Court is of the considered view that the examination and cross-examination of the prosecutrix during the separated trial proceedings, to an extent, constitutes a continuation of the same factual narrative and not an isolated or foreign body of evidence. The appellant merely seeks to place this material before this Court to enable a full and fair consideration of her defence.

13. In the opinion of this Court, the testimony of the prosecutrix recorded during the trial of the co-accused persons is a relevant and admissible piece of evidence for the purpose of adjudicating the present appeal and ought not to be excluded at the threshold merely due to procedural or technical objections raised by the respondent.

14. This Court finds no legal impediment in doing so and also finds no legal bar in the CrPC or the Indian Evidence Act that would preclude consideration of such material in the present appeal. In fact, to deny the appellant the opportunity to place relevant and material evidence on record would itself result in a denial of fair trial rights and would obstruct the appellate court's truth-finding role. As held in ***Zahira Habibulla H. Sheikh v.***



*State of Gujarat (supra)*, a ~~trial~~ trial — and equally, an appellate adjudication — must not become a battle of technicalities but must remain a sincere endeavour to reach the truth.

15. Further, the mere taking on record of additional evidence does not *ipso facto* amount to acceptance of its correctness. The relevancy, admissibility, and evidentiary weight of the additional material shall be assessed at the time of final arguments. Both sides shall have the opportunity to address the Court on the worth and effect of the additional evidence.

16. As regards the objections raised by the learned APP, this Court finds them to be devoid of merit. Section 391 of the CrPC operates in a distinct domain and is intended to supplement the appellate court's powers to ensure complete justice. No provision either under the CrPC or the Indian Evidence Act prohibits the appellate court from considering evidence recorded in related proceedings arising from the same FIR. The apprehension of prejudice to the prosecution is illusory. The prosecution is not an adversary but a minister of justice, and cannot oppose the introduction of material merely because it may favour the accused.

17. The custody certificate dated 11.03.2022 submitted by the Deputy Superintendent, Tihar Jail sought to be placed on record, emanates from jail records maintained in discharge of official duties and does not require formal proof through oral testimony.

18. In the facts and circumstances, this Court finds that no prejudice will be caused to either the prosecution or the victim if the additional evidence is taken on record. On the contrary, refusing to consider material that goes to the root of the matter would amount to a grave miscarriage of justice.

ORDER: 7/5/2025

18/07/2025





19. Accordingly, the present application is allowed. The testimonial account of the prosecutrix dated 06.04.2022 and 13.04.2022, along with the custody certificate of the appellant dated 11.03.2022, are taken on record, subject to all just exceptions regarding relevance, admissibility, and evidentiary value at the time of final arguments.

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20. List for hearing on 22.07.2025.

**AMIT MAHAJAN, J**

**APRIL 24, 2025**