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

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CRL.M.C. 2352/2010

SUNIL CHANDRA

..... Petitioner

Through: Mr. M.M. Singh, Advocate

versus

STATE NCT OF DELHI & ANR.

..... Respondent

Through: Mr. Sunil Sharma, APP for State with SI Radhey Shyam,

**CORAM:**

**JUSTICE SHIV NARAYAN DHINGRA**

**ORDER**

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**03.08.2010**

This petition under Section 482 Cr.P.C has been preferred by the petitioner for quashing of criminal proceedings resulting from FIR No.345 of 1999 Police Station Paschim Vihar under Sections 394/411 read with Section 34 IPC on the ground that the trial against the petitioner was pending for quite long time and the sole material witness i.e. complainant was not being examined for the last five years by the prosecution.

It is submitted by counsel for the State that this witness Mr. Vijay Malik who is complainant in this case was not traceable. The address available with the police has been visited and the report was that the complainant never lived there.

I consider that if a witness is not traceable, the prosecution should inform the court about non-availability of the witness and ought to have made a statement that the witness be dropped and if there was any other material witness, the same should have been examined.

The counsel for State submits that the statement about dropping of the

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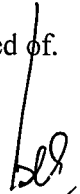
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witness shall be made before learned Metropolitan Magistrate on next date of hearing. However, next date in this case is 4<sup>th</sup> December 2010 and the learned MM is stated to be on leave. It is submitted by counsel for the petitioner that the petitioner has been selected for a job and pendency of present proceedings shall come in the way of the petitioner in case the present proceedings are not disposed of earlier and the petitioner would become overage.

The petitioner shall make an application to learned ACMM/CMM for transfer of his case from the Court of Ms. Rachna Tiwari Lakhanpal, Metropolitan Magistrate to some other MM and on making such an application, the learned ACMM shall transfer the case of the petitioner to some other MM forthwith. It is submitted by counsel for State that on next date, the prosecution shall make a statement about dropping of complainant Mr. Vijay Malik or shall produce him before the Court of learned MM. The learned MM where the case of the petitioner would be transferred, shall fix the date within August 2010 and if the complainant Mr. Vijay Malik is not produced and there is no material witness available on record, the learned MM shall pass an appropriate orders.

With above directions, the present petition stands disposed of.

*Dasti.*

  
SHIV NARAYAN DHINGRA, J

AUGUST 03, 2010  
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