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% 10.11.2010

Present: Mr. Satish Aggarwal, Adv. for the Petitioner.
None for the respondents.

**+ Crl. M.A. No. 17172/2010 (exemption) & Crl. M.C.
*3487/2010**

In the trial, which remained pending for about 25 years, petitioner filed an application under Section 311 Cr.P.C. for summoning of certain departmental witnesses. This application was allowed by the Additional Chief Metropolitan Magistrate (ACMM), Delhi, vide order dated 19th May, 2010, subject to cost of ₹ 7,000/- payable to each of the accused and the petitioner was afforded opportunity to lead evidence. Aggrieved by imposition of cost, petitioner challenged this order by filing Crl. M.C. 2426 of 2010, which was disposed of by a learned Single Judge of this Court on 30th July, 2010 and the quantum of cost was reduced to ₹3500/- to each of the accused, for enabling the petitioner to lead evidence. On 30th July, 2010, when the matter was taken up by the ACMM, petitioner made a statement that it was no more interested in examining any witness. However, cost was paid and this fact has been recorded in the order dated 30th July, 2010 passed by the ACMM. However,

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Petitioner filed a miscellaneous application in the Crl. M.C. 2426 of 2010 seeking refund of cost paid by it on the ground that since petitioner had given up his right to lead evidence, cost was not payable. This application was disposed of by a learned Single Judge of this Court on 9th August, 2010 by holding that no interim application in this regard was maintainable in a disposed of matter. However, liberty was granted to the petitioner to assail the order dated 30th July, 2010 passed by the ACMM by an independent petition. That is how, petitioner is before this Court.

In exercise of inherent powers of the High Court under Section 482 Cr.P.C. I am not inclined to interfere with the order dated 30th July, 2010 passed by the ACMM in the peculiar facts of this case. The fact remains that the case had to be adjourned at the instance of the petitioner even if later on petitioner gave up its claim of producing certain witnesses. For this reason imposition of cost would be justifiable as the matter had to be adjourned at the instance of petitioner. Petition is disposed of in the above terms.


A.K. PATHAK, J.

NOVEMBER 10, 2010

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