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% 15.11.2010

Present: Mr. N. Hariharan, Adv. for the Petitioner.
Mr. M.P. Singh, APP for the State with SI Rahul,
P.S. Karol Bagh.

+ CrI. M.C. No. 3545/2010

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Petitioner is facing trial before the Additional Chief Metropolitan Magistrate, Delhi in FIR No. 202/1996 under Sections 420/409/120-B IPC. On 8th June, 2009, PW 1 Rajinder Singh appeared before the Trial Court when his examination-in-chief was recorded. He was even cross-examined by the counsel for the co-accused. However, opportunity of the petitioner to cross-examine this witness was closed since his counsel was not available. Later on, an application under Section 311 Cr.P.C. was filed for recalling of PW1 Rajinder Singh, but the same has been dismissed by the order dated 8th September, 2010 impugned in this petition. It is contended that on 8th June, 2009, counsel for the petitioner was held up in the High Court and could not reach in time when the matter was taken up by the Trial Court.

Without going into merits and demerits of the contentions raised by the counsel, I am of the view that the petitioner can be

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given one opportunity to cross-examine PW1 Rajinder Singh, subject to his availability. So far as inconvenience caused to the witness is concerned, same can be compensated in terms of cost. Accordingly, this petition is allowed. It is made clear that only one opportunity would be given to the petitioner in this regard and for that purpose Trial Court shall fix a date and summon the witness. Petitioner shall pay ₹2500/- to PW1 Rajinder Singh on the date fixed by the Trial Court. However, in case witness is not available on account of change of address or otherwise, no adverse inference would be drawn with regard to his statement in examination-in-chief qua the petitioner.

Petition is disposed of in the above terms.

Copy of this order be given dasti.



A.K. PATHAK, J.

NOVEMBER 15, 2010

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