

42# \$~

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

+ CRL.REV.P. 468/2011

SATYA PRAKASH

..... Petitioner

Through: Mr. Vikas Jain, Advocate.

versus

STATE

..... Respondent

Through: Mr. Manoj Ohri, APP with SI Anil
Kumar, PS A.C. Branch.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

20.10.2011

%

Crl. M.A. No. 12422/2011 (Exemption)

Allowed, subject to all just exceptions.

Crl. Rev. P. 468/2011 & Crl. M.A. No. 12423/2011 (Stay)

By this petition the Petitioner seeks to recall the witnesses PW4 Pramod Kala and PW5 Ramadhar Verma, the Complainant and the shadow witnesses.

An application was filed by the Petitioner before the learned Special Judge which was dismissed on account of the fact that all the witnesses have been cross-examined by the accused and since there was a change in the counsel on that pretext the application was filed on 5th February, 2011

CRL.REV.P. 468/2011

Page 1 of 3

Signature Not Verified

Digitally Signed By: AMULYA
Certify that the digital file and
physical file have been compared and
the digital data is as per the physical
file and no page is missing.

2 ✓

praying for recalling of PW8 to PW12 and PW3 for further cross examination. The said application was allowed vide order dated 1st March, 2011 and thereafter an application was moved stating that in fact PW2 was required to be recalled instead of PW3 which was written in the said application inadvertently. Even this application was allowed.

Now the Petitioner wants recalling of PW4 and PW5. As per the learned counsel for the Petitioner the reason for recalling of PW4 and PW5 is that some new facts regarding the presence of PW2 in the school at the relevant time of raid and regarding taking of original acquaintance Role Register have come in the cross-examination of PW2 and PW6 which have to be put to these witnesses, that is, PW4 and PW5.

I have heard learned counsel for the Petitioner. The defence was given ample opportunity to cross examine the witnesses. They were further recalled for cross examination. This process cannot be continued indefinitely. PW2 was reexamined on 16th March, 2011 and PW6 on 27th May, 2011. However, the Petitioner filed this application only on 11th August, 2011 when the case was listed for recording his statement under Section 313 Cr.P.C.

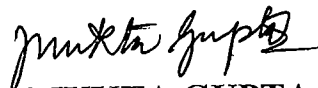
The law on the point is well settled that in an application under

2

Section 311 Cr.P.C recalling of a witness is not to be allowed to fill in the lacunae of either side but for just decision of the case. In *Hanuman Ram v. State of Rajasthan*, 2008 (15) SCC 652 their lordships while dealing with a case where the witnesses had already been cross-examined once and an application was moved by the counsel for the Appellant for recalling of witnesses in order to confront them with their previous statements, set aside the order of recalling of witnesses passed by the High Court observing that sufficient opportunity had already been granted to the Appellants therein when they were cross-examined for the first time. In the case at hand, the witnesses have not only been cross-examined once but most of the witnesses reexamined. Thus, the Petitioners were granted sufficient opportunity to cross-examine the witnesses.

In such a situation I do not find any infirmity in the order of the learned Trial Court declining the permission to recall PW4 and PW5.

I find no merit in the petition. Petition and application are dismissed.


MUKTA GUPTA, J.

OCTOBER 20, 2011
'vn'