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

Date of Decision: 04th March, 2015

+ **CRL .M.C.725/2015 & Crl. MA 2765/2015**

SHIV KUMAR YADAV Petitioner

Through: Mr D.K. Mishra, Advocate

versus

STATE Respondent

Through: Mr. Rajesh Mahajan, ASC for State
along with Insp. Anil Dureja, Insp.
Devender Rathi, SI Sandeep and SI
Renu, PS Sarai Rohilla, Delhi.

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CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

: SUNITA GUPTA, J.

1. This is a petition under Article 227 of the Constitution of India read with Section 482 Cr.P.C. moved on behalf of the petitioner for setting aside the order dated 18th February, 2015 passed by the learned Additional Sessions Judge in Sessions Case No. 02/2015 vide FIR No. 1291/2014 u/s 376/323/506 IPC registered with Police Station Sarai Rohilla vide which the prayer of the petitioner for recalling the prosecution witnesses for further cross-examination was declined.

2. FIR in the instant case was registered on the basis of statement made by prosecutrix "X" wherein she levelled allegations of commission of rape upon her on 5th December, 2014 by the petitioner in his cab No. DL-1YD-

7910 Swift Desire while she was returning home in that cab. After completion of investigation, charge sheet was submitted before the learned Metropolitan Magistrate and the case was committed to the Court of Sessions. After hearing arguments on charge, charge u/s 376(2)(m) 323/356/506 IPC was framed. Thereafter prosecution in all examined 28 witnesses. Statement of petitioner u/s 313 Cr.P.C. was recorded. Thereafter application u/s 311 Cr.P.C. was moved for recalling all the prosecution witnesses for further cross-examination which was declined by the learned Additional Sessions Judge vide the impugned order. Feeling aggrieved by the same, the present petition has been filed.

3. It was submitted by learned counsel for the petitioner that the previous defence counsel Sh. Alok Dubey having enrolment No. D-2695/14 and Sh. Ankit Bhatia having enrolment No.2805/14 got the petitioner's *vakalatnama* signed at Tihar Jail to defend his case. Both the advocates were very new to the profession and Sh. Alok Dubey, Advocate had not even passed the screen test as was required by Bar Council of Delhi and, as such, was not competent to contest the case on behalf of the petitioner. The *vakalatnama* does not even contain the name of the Court for which the counsels came to be appointed. It was submitted that besides the maxim *justice delayed is justice denied* there is other judicial maxim *justice hurried is justice buried* which applies to the facts of the present case. The trial has been conducted in this case on a day to day basis without allowing the petitioner even breathing space to have a fair conference with his counsel which is vital and necessary for fair defence in such cases wherein the petitioner can be punished for a substantially long period of incarceration.

4. It was further submitted that the learned Trial Court failed to appreciate that the case of the petitioner as disclosed in application u/s 311 Cr.P.C. was not that of change of counsel but that of being represented by a counsel who was a novice in law, incompetent and having just enrolled as an advocate who does not know the nuances of conducting evidence which is vital for a fair defence, leave aside conducting trial in such a serious matter. It is evident from the fact that questions have been asked which are self incriminatory. The counsel for the petitioner has taken up the case *pro bono* because the accused is an indigent person and does not have the wherewithal to match the might of the State who have engaged Special Public Prosecutor. While the object of having Fast Track Courts may be to have an expeditious trial, the learned Additional Sessions Judge cannot overlook the judicial dictum that right to defence includes the right to effective and meaningful defence at the trial. The process of justice may be speeded up and hurried but the fairness which is a basic element of justice cannot be permitted to be buried. It was required to be seen whether the petitioner was having meaningful and effective defence or not even though the counsel may be of the choice of the accused.

5. It was further submitted that the counsel engaged by the petitioner failed to conduct the cross-examination of the witnesses properly; that material portions of evidence available on record were not put to the witnesses to contradict their statements; failure of the counsel to elicit these contradictions would preclude the petitioner from putting forth an effective defence in accordance with law at a subsequent stage of the case.

6. Reference was also made to the material facts as detailed in para 15 of the application u/s 311 Cr.P.C. moved before the learned Additional

Sessions Judge for enumerating the reasons why recall of prosecution witnesses is necessary. Lastly, it was submitted that the petitioner does not insist on calling upon the entire prosecution witnesses for cross-examination and he will be satisfied if PW 2,3,4,9,12,13,14,16,20,22,24,26 and 27 are ordered to be recalled. Moreover, counsel undertakes not to repeat any question which has already been put to the witnesses for the purpose of cross-examination. As such, it was submitted that for the purpose of affording an opportunity to the petitioner to have a fair trial, these witnesses be recalled for the purpose of cross-examination.

7. Reliance was placed on:

- i. ***Rajaram Prasad Yadav vs. State of Bihar & Anr.***, (2013) 14 SCC 461.
- ii. ***Salamat Ali vs. State***, 174(2010)DLT558
- iii. ***Kishore Chand v. State of Himachal Pradesh***, AIR 1990 SC 2140.

8. The application is vehemently opposed by the learned Additional Standing Counsel for the State on the ground that by virtue of application u/s 311 Cr.P.C., the petitioner wants to recall all the prosecution witnesses for the purpose of cross-examination which tantamounts to retrial of the case which is to be resorted to only in exceptional circumstances which are lacking in the instant case. Even if the petitioner restricts his claim to certain witnesses he will still claim prejudice that although he wanted to recall entire prosecution witnesses but was allowed only certain number of witnesses to be recalled. Moreover, such a prayer should have been made before the learned Trial Court so that the Court could have applied its mind as to whether limited number of witnesses are required to be recalled or not. Counsel further submits that the primary aim of this application is to

delay the trial. By conducting day-to-day trial, the learned Additional Sessions Judge has followed the legislative mandate as incorporated in Section 309 of the Code of Criminal Procedure. The counsel cannot be permitted to say that by following the procedure prescribed by law, he has been prejudiced in any manner. Moreover, the counsel was appointed by the accused of his own choice. He was not novice to crime inasmuch as he was involved in 9 other cases. Moreover, sufficient opportunity was given to the counsel to have consultation with the petitioner and only thereafter the witnesses were cross-examined. It was further submitted that the submission of learned counsel for the petitioner that the earlier counsel was not eligible to practice as he had not qualified screen test was not based on any documentary evidence and, in fact, the learned counsel should not have commented upon the competency of the Advocate behind his back. Reference was also made to the detailed cross-examination conducted by the earlier counsel for submitting that the manner in which the witnesses were cross-examined does not reflect that earlier counsel was incompetent or inexperienced. In any case competency is always subjective.

9. Counsel further urged that it is easier to pick holes in the cross-examination conducted by the earlier counsel. If with change of counsel defence is to vary, it can be adopted thereafter also. If the application is allowed what is the guarantee that after the application is allowed and third counsel is engaged then he will not move such an application for recalling the witnesses and such a practice cannot be allowed to be adopted. Allowing of the application would tantamount to filling in the lacuna, more particularly, when it is not limited to a particular question. In fact, it will open a pandora box. A reasoned order has been passed by the learned

Additional Sessions Judge, which cannot be termed to be perverse and no interference is warranted, as such, the petition is liable to be dismissed.

10. Reliance was placed on:

- i. ***Raminder Singh vs. State***, MANU/DE/0339/2008, decided on 20.02.2008.
- ii. ***Prakash Chandra vs. CBI***, 188 (2012) DLT 62
- iii. ***Noor Jahan vs. State of NCT of Delhi***, 2010 ILR 2 Delhi 507
- iv. ***Dr. Rajesh Talwar and Anr. vs. CBI and Anr.***, (2014) 1 SCC 628.
- v. ***Shri Praveen Jain vs. Mr. Naresh Kumar Goel***, MANU/DE/1565/2013.
- vi. ***State vs. Navjot Sandhu***, AIR 2005 SC 3820.

11. I have given my considerable thoughts to the respective submissions of learned counsel for the parties and have perused the record.

12. Learned counsel for the petitioner laid emphasis on the maxim '*justice hurried is justice buried*' but there is another maxim '*justice delayed is justice denied.*' Quick and prompt trial of criminal offences is the need of the hour to repose faith of the people in judiciary. For this purpose the constitutional guarantee of speedy trial is an important safeguard. The right to speedy trial is implicit in Art.21 of the constitution of India. The first written articulation of the right to speedy trial appeared in 1215 in the Magna Carta: "We will sell to no man, we will not deny or defer to any man either justice or right." Article 21 of the Indian constitution declares that "no person shall be deprived of his life or personal liberty except according to the procedure laid by law." Justice V.R.Krishna Iyer in ***Babu Singh v. State of UP***, AIR 1978 SC 527 remarked, "Our justice system even in grave cases, suffers from slow motion syndrome which is lethal to 'fair trial' whatever the ultimate

decision. Speedy justice is a component of social justice since the community, as a whole, is concerned in the criminal being condignly and finally punished within a reasonable time and the innocent being absolved from the inordinate ordeal of criminal proceedings.”

Even in the case of *Sheela Barse vs. Union of India*, 1986 3 SCR 562, Hon’ble Supreme Court has held that the right to speedy trial is a fundamental right. Further it was stated by the Hon’ble Apex Court that the consequence of violation of the fundamental right to speedy trial would be that the prosecution itself would be liable to be quashed on the ground that it is in breach of fundamental right.

13. Section 309 has been inserted in the Code of Criminal Procedure, 1973 keeping in view this constitutional mandate of speedy trial.

14. Under Section 309 of the Code of Criminal Procedure falling under Chapter XXIV it has been specifically stipulated as under:-

“(1) In every inquiry or trial, the proceedings shall be held as expeditiously as possible, and in particular, when the examination of witnesses has once begun, the same shall be continued from day to day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded.

Provided that when the inquiry or trial relates to an offence under sections 376 to 376D of the Indian Penal Code (45 of 1860), the inquiry or trial shall, as far as possible, be completed within a period of two months from the date of commencement of the examination of witnesses.”

15. Keeping in view the fact that crime against women is on increase, in order to effectively deal with the situation, by Criminal Law Amendment Act, 2013, Section 21 Sub Section 1 was substituted w.e.f. 3rd February, 2013 which reads as under:-

“(1) In every inquiry or trial the proceedings shall be continued from day-to-day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded.

Provided that when the inquiry or trial relates to an offence under section 376, section 376A, section 376B, section 376C or section 376D of the Indian Penal Code, the inquiry or trial shall, as far as possible be completed within a period of two months from the date of filing of the charge sheet.”

16. As such, there is a legislative mandate that where the trial relates to an offence u/s 376, the inquiry or trial, shall be completed within a period of two months as far as possible from the date of filing of the charge sheet. Special Courts/Fast Track Courts to deal with the cases of sexual assault of women were set up by the Government. Hon’ble Supreme Court has been giving specific directions from time to time reminding that once examination of witnesses starts, the Court has to continue the trial on day-to-day until all witnesses have been examined. The Court has to record reasons for deviating from the said course. “Special reasons” are required to be mentioned in the order for adjournment and that can alone confer jurisdiction on the Court to adjourn the case without examination of witnesses who are present in Court.

17. In this context it will also be worthwhile to refer to a circular issued by the High Court of Delhi in Circular No. 1/87 dated 12th January 1987. Clause 24A of the said circular reads as under:

“24A disturbing trend of trial of Sessions cases being adjourned, in some cases to suit convenience of counsel and in some others because the prosecution is not fully ready, has come to the notice of the High Court. Such adjournments delay disposal of Sessions cases.

The High Court considers it necessary to draw the attention of all the Sessions Judges and Assistant Sessions Judges once again to the following provisions of the Code of Criminal Procedure, 1973, Criminal Rules of Practice, Kerala, 1982

and Circulars and instructions on the list system issued earlier, in order to ensure the speedy disposal of Sessions cases.

1. (a) In every enquiry or trial, the proceedings shall be held as expeditiously as possible, and, in particular, when the examination of witnesses has once begun, the same shall be continued from day to day until all the witnesses in attendance have been examined, unless the court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded. (Section 309(1) Code of Criminal Procedure).

(b) After the commencement of the trial, if the court finds it necessary or advisable to postpone the commencement of, or adjourn, any inquiry or trial, it may, from time to time, for reasons to be recorded postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable. If witnesses are in attendance no adjournment or postponement shall be granted, without examining them, except for special reasons to be recorded, in writing. (Section 309(2) Code of Criminal Procedure).

2. Whenever more than three months have elapsed between the date of apprehension of the accused and the close of the trial in the Court of Sessions, an explanation of the cause of delay, (in whatever court it may have occurred) shall be furnished, while transmitting the copy of the judgment. (Rule 147 Crl. Rules of Practice).

3. Sessions cases should be disposed of within six weeks of their institution, the date of commitment being taken as the date of institution in Sessions Cases. Cases pending for longer periods should be regarded as old cases in respect of which explanations should be furnished in the calendar statements and in the periodical returns. (High Court Circular No. 25/61 dated 26th October 1961).

4. Sessions cases should be given precedence over all other work and no other work should be taken up on sessions days until the sessions work for the day is completed. A Sessions case once posted should not be postponed unless that is unavoidable, and once the trial has begun, it should proceed continuously from day to day till it is completed. If for any reason, a case has to be adjourned or postponed, intimation should be given forthwith to both sides and immediate steps be taken to stop the witnesses and secure their presence on the adjourned date.

On receipt of the order of commitment the case should be posted for trial to as early a date as possible, sufficient time, say three weeks, being allowed for securing the witnesses. Ordinarily it should be possible to post two sessions cases a week, the first on Monday and the second on Thursday but sufficient time should be allowed for each case so that one case does not telescope into

the next. Every endeavour should be made to avoid telescoping and for this, if necessary, the court should commence sitting earlier and continue sitting later than the normal hours. Judgment in the case begun on Monday should ordinarily be pronounced in the course of the week and that begun on Thursday the following Monday. (Instructions on the list system contained in the O.M. dated 8th March 1984).

All the Sessions Judges and the Assistant Sessions Judges are directed to adhere strictly to the above provisions and instructions while granting adjournments in Sessions Cases.”

18. In this context some of the decisions which have specifically dealt with such a situation which has caused serious inroad into the criminal jurisprudence can also be referred to. In one of the earliest cases reported in ***Emperor v. Badri Prasad***, 1913 ILR 35 All 63, a Division Bench of the Allahabad High Court has stated the legal position as under:

“...Moreover, we wish to point out that it is most inexpedient for a Sessions trial to be adjourned. The intention of the Code is that a trial before a Court of Session should proceed and be dealt with continuously from its inception to its finish. Occasions may arise when it is necessary to grant adjournments, but such adjournments should be granted only on the strongest possible ground and for the shortest possible period....”

(Emphasis added)

19. In a decision reported in ***Chandra Sain Jain and Ors. v. The State***, 1982 Cri. L.J. NOC 86 (ALL), a Single Judge has held as under while interpreting Section 309 of Code of Criminal Procedure:

“Merely because the prosecution is being done by C.B.I. or by any other prosecuting agency, it is not right to grant adjournment on their mere asking and the Court has to justify every adjournment if allowed, for, the right to speedy trial is part of fundamental rights envisaged under Article 21 of the Constitution, 1979 Cri LJ 1036 (SC), Foll.”

(Emphasis added)

20. In the decision reported in *Lt. Col. S.J. Chaudhary v. State (Delhi Administration)*, (1984) 1 SCC 722, Apex Court in paragraphs 2 and 3 has held as under:

2. We think it is an entirely wholesome practice for the trial to go on from day-to-day. It is most expedient that the trial before the Court of Session should proceed and be dealt with continuously from its inception to its finish. Not only will it result in expedition, it will also result in the elimination of manoeuvre and mischief. It will be in the interest of both the prosecution and the defence that the trial proceeds from day-to-day. It is necessary to realise that Sessions cases must not be tried piecemeal. Before commencing a trial, a Sessions Judge must satisfy himself that all necessary evidence is available. If it is not, he may postpone the case, but only on the strongest possible ground and for the shortest possible period. Once the trial commences, he should, except for a very pressing reason which makes an adjournment inevitable, proceed de die in diem until the trial is concluded.

3. We are unable to appreciate the difficulty said to be experienced by the Petitioner. It is stated that his Advocate is finding it difficult to attend the court from day-to-day. It is the duty of every Advocate, who accepts the brief in a criminal case to attend the trial from day-to-day. We cannot over-stress the duty of the Advocate to attend to the trial from day-to-day. Having accepted the brief, he will be committing a breach of his professional duty, if he so fails to attend. The criminal miscellaneous petition is, therefore, dismissed."

(Emphasis added)

21. In a comprehensive decision of Hon'ble Supreme Court reported in *State of U.P. v. Shambhu Nath Singh and Ors.*, (2001) 4 SCC 667 the legal position on this aspect has been dealt with in extenso. Useful reference can be made to paragraphs 10 & 11:

"10. Section 309 of the Code of Criminal Procedure (for short "the Code") is the only provision which confers power on the trial court for granting adjournments in criminal proceedings. The conditions laid down by the legislature for granting such adjournments have been clearly incorporated in the section. It reads thus:

309. xxx xxx xxx

11. The first Sub-section mandates on the trial courts that the proceedings shall be held expeditiously but the words "as expeditiously as possible" have provided some play at the joints and it is through such play that delay often creeps in the

trials. Even so, the next limb of the Sub-section sounded for a more vigorous stance to be adopted by the court at a further advanced stage of the trial. That stage is when examination of the witnesses begins. The legislature which diluted the vigour of the mandate contained in the initial limb of the Sub-section by using the words "as expeditiously as possible" has chosen to make the requirement for the next stage (when examination of the witnesses has started) to be quite stern. Once the case reaches that stage the statutory command is that such examination "shall be continued from day to day until all the witnesses in attendance have been examined". The solitary exception to the said stringent rule is, if the court finds that adjournment "beyond the following day to be necessary" the same can be granted for which a condition is imposed on the court that reasons for the same should be recorded. Even this dilution has been taken away when witnesses are in attendance before the court. In such situation the court is not given any power to adjourn the case except in the extreme contingency for which the second proviso to Sub-section (2) has imposed another condition,

Provided further that when witnesses are in attendance, no adjournment or postponement shall be granted, without examining them, except for special reasons to be recorded in writing."

22. In *Akil @ Javed vs. State of NCT of Delhi*, 2013(7) SCC 125, Hon'ble Supreme Court came heavily upon the learned Trial Courts by observing as under:-

"35. It is unfortunate that in spite of the specific directions issued by this Court and reminded once again in **Shambhu Nath** (supra) such recalcitrant approach was being made by the trial Court unmindful of the adverse serious consequences affecting the society at large flowing therefrom. Therefore, even while disposing of this appeal by confirming the conviction and sentence imposed on the Appellant by the learned trial Judge, as confirmed by the impugned judgment of the High Court, we direct the Registry to forward a copy of this decision to all the High Courts to specifically follow the instructions issued by this Court in the decision reported in **Rajdeo Sharma** (supra) and reiterated in **Shambhu Nath** (supra) by issuing appropriate circular, if already not issued. If such circular has already been issued, as directed, ensure that such directions are scrupulously followed by the trial Courts without providing scope for any deviation in following the procedure prescribed in the matter of a trial of sessions cases as well as other cases as provided under Section 309 of Code of Criminal Procedure. In this respect, the High Courts will also be well advised to use their machinery in the respective State Judicial Academy to achieve the desired result. We hope and trust that the respective High Courts would take serious note of the above directions issued in the decisions reported in **Rajdeo Sharma** (supra) which

*has been extensively quoted and reiterated in the subsequent decision of this Court reported in **Shambhu Nath** (supra) and comply with the directions at least in the future years."*

23. Again in **Vinod Kumar vs. State of Punjab**, 2015 (1) SCALE 542 Hon'ble Supreme Court expressed the agony and anguish by observing as under:-

41.Adjournments are sought on the drop of a hat by the counsel, even though the witness is present in court, contrary to all principles of holding a trial. That apart, after the examination-in-chief of a witness is over, adjournment is sought for cross-examination and the disquieting feature is that the trial courts grant time. The law requires special reasons to be recorded for grant of time but the same is not taken note of. As has been noticed earlier, in the instant case the cross-examination has taken place after a year and 8 months allowing ample time to pressurize the witness and to gain over him by adopting all kinds of tactics. There is no cavil over the proposition that there has to be a fair and proper trial but the duty of the court while conducting the trial to be guided by the mandate of the law, the conceptual fairness and above all bearing in mind its sacrosanct duty to arrive at the truth on the basis of the material brought on record. If an accused for his benefit takes the trial on the path of total mockery, it cannot be countenanced. The Court has a sacred duty to see that the trial is conducted as per law. If adjournments are granted in this manner it would tantamount to violation of rule of law and eventually turn such trials to a farce. It is legally impermissible and jurisprudentially abominable. The trial courts are expected in law to follow the command of the procedure relating to trial and not yield to the request of the counsel to grant adjournment for non-acceptable reasons. In fact, it is not all appreciable to call a witness for cross-examination after such a long span of time. It is imperative if the examination-in-chief is over, the cross-examination should be completed on the same day. If the examination of a witness continues till late hours the trial can be adjourned to the next day for cross-examination. It is inconceivable in law that the cross-examination should be deferred for such a long time. It is anathema to the concept of proper and fair trial. The duty of the court is to see that not only the interest of the accused as per law is protected but also the societal and collective interest is safe-guarded. It is distressing to note that despite series of judgments of this Court, the habit of granting adjournment, really an ailment, continues. How long shall we say, "Awake! Arise!". There is a constant discomfort. Therefore, we think it appropriate that the copies of the judgment be sent to the learned Chief Justices of all the High Courts for circulating the same among the learned trial Judges with a command to follow the principles relating to trial in a requisite manner and not to defer the cross-examination of a witness at their pleasure or at the leisure of the defence counsel, for it eventually makes the trial an apology for

trial and compels the whole society to suffer chicanery. Let it be remembered that law cannot allowed to be lonely; a destitute.

24. In view of legislative mandate as incorporated under Section 309 of the Code of Criminal Procedure and repeated directions given by Hon'ble Supreme Court if the learned Additional Sessions Judge conducted the trial of the case on day-to-day basis, no fault can be found with the manner the trial has been conducted.

25. The further submission of learned counsel for the petitioner that due to trial of the case on day-to-day basis, the accused was deprived of due consultation by his Advocate, the same is not borne out from the record.

26. Certified copies of the order sheets placed on record by the petitioner himself goes to show that at every stage of the proceedings, he has been represented by an Advocate. After the arrest of the accused when he was produced before the learned Metropolitan Magistrate on 8th December, 2014, Sh. Vineet Malhotra, Advocate from legal aid was present and after hearing arguments, police remand for three days was granted and accused was ordered to be produced on 11th December, 2014. On 11th December, 2014, counsel from DLSA was present and after hearing the submissions, the accused was remanded to judicial custody. After the case was committed to the Court of Sessions and the petitioner was produced before the learned Additional Sessions Judge on 7th January, 2015. Sh Alok Kumar, Advocate appeared along with the accused. He moved an application seeking permission to inspect the car in question and the permission was granted. The matter was adjourned for hearing arguments on charge on 9th January, 2015. On 9th January, 2015, arguments on charge were heard from learned Public Prosecutor for the

State as well as Sh. Alok Kumar, counsel for accused in the presence of accused who was produced from jail. By detailed order, accused was directed to be charged for offence punishable u/s 376(2)(m)/323/356/506 IPC. The charge was read over and explained to the accused. He pleaded not guilty and claimed trial, however, he refused to sign the charge stating that arguments on charge were not advanced in his presence and he wanted to engage another counsel. At that juncture, his counsel Sh. Alok Kumar submitted that he has been duly representing the accused. His *Vakalatnama* executed by the accused formed part of the court record. The accused was, therefore, again questioned as to why he did not want to sign the charges then he submitted that he had not read complete order and did not want to sign the same. The charge was again read over and explained to him then he gave a separate statement written by him in his own hand that he was willing to sign the charges voluntarily and that he pleads not guilty and claimed trial. Thereafter he signed the charge. At that stage, learned Public Prosecutor for the State submitted that in terms of Section 294 Cr.P.C., accused may be asked if he is ready to admit any document of the prosecution. After due consultation with his lawyer, the accused gave statement which was recorded separately wherein he did not dispute the factum of recording statement of prosecutrix u/s 164 Cr.P.C., his refusal to join TIP proceedings, his potency report prepared by Dr. Ashish Tyagi and the factum of his being the registered owner of the vehicle.

27. The record also reveals that the Prosecutrix, who was examined on 15.01.2015 was not cross-examined on that day and her cross-examination was deferred at request of the then learned defence counsel, who wanted to have a legal interview with the accused before cross-examining the

prosecutrix. The prosecutrix was partly cross-examined by learned defence counsel on 16.01.2015 and her further cross-examination was concluded by learned defence counsel on 17.01.2015. On the same day, necessary directions for ensuring the safety and security of the accused/applicant were also issued on an application moved by him in this regard.

28. The record of the case further reveals that learned defence counsel, who was earlier representing the accused had been seeking necessary instructions from the accused on various aspects, as is apparent from the order dated 19.01.2015 also.

29. On 22.01.2015, cross-examination of PW13 was also deferred on a request made on behalf of accused, as was the cross-examination of PW22, which was deferred on 24.01.2015, again at request of learned defence counsel. On 28.01.2015, again the cross-examination of PW26 was deferred at request of learned defence counsel, who wanted to go through the record before further cross-examining the witness. Similarly, the cross-examination of PW27 SI Renu was deferred on 29.01.2015 at request of learned defence counsel. Her further cross-examination was again deferred on 30.01.2015 at request of learned defence counsel. Prosecution Evidence was closed vide order dated 31.01.2015.

30. On 03.02.2015, statement of accused was recorded under Section 313 Cr.P.C. Learned defence counsel submitted that accused wants to examine his wife as defence witness, but on the date fixed for her examination, she was not examined as a defence witness. The application of the accused seeking permission to examine himself in his defence under Section 315 Cr.PC was allowed vide order dated 04.02.2015, for which

purpose the case was adjourned to 09.02.2015. On 09.02.2015, learned defence counsel, Sh.Dharmender Kumar Mishra, Advocate filed his vakalatnama on behalf of accused and earlier counsel sought discharge. At request of the new counsel appointed by accused, the case was listed for defence evidence. The order passed by learned Additional Sessions Judge dated 11.02.2015 reflects that Sh. Dharamender Kumar Mishra, Advocate inspected the Court record on 10.02.2015 and 11.02.2015. Thereafter he filed an application for supply of documents and another application for adjournment. The documents were supplied to him. However the request for further adjournment was declined. Accused stated that he did not wish to examine himself in his defence u/s 315 Cr.P.C. Accordingly the defence evidence was closed. The matter was thereafter listed for final arguments on 16.02.2015, on which date the application for recalling the prosecution witnesses for further cross examination was moved.

31. The aforesaid narration of proceedings before the learned Additional Sessions Judge clearly reflects that while posting the matter on day to day basis, the Court's only endeavour was to comply with the provisions of Section 309 Cr.P.C as far as possible while ensuring the right of the accused to a fair trial. The earlier counsel had been seeking adjournment for consulting the petitioner which was duly granted and under these circumstances the submission of learned counsel for the petitioner that justice hurried is justice buried, deserves outright rejection.

32. The other submission of learned counsel for the petitioner that Sh. Alok Dubey, Advocate was not competent to appear as an Advocate inasmuch as he had not even undergone screening test as required by Bar Council of Delhi Rules and was not issued practice certificate, this

submission is not fortified by any record. Much was said against the competency of the earlier counsel representing the petitioner. However, learned standing counsel for the State was right in submitting that competency of an Advocate is a subjective issue which should not have been attacked behind the back of the concerned Advocate. In *Navjot Sandhu*(supra), Hon'ble Supreme Court referred to *Strickland v. Washington* [466 US 668] making it clear that judicial scrutiny of a counsel's performance must be careful, deferential and circumspect as the ground of ineffective assistance could be easily raised after an adverse verdict at the trial. It was observed therein:

"Judicial scrutiny of counsel's performance must be highly deferential. It is all too tempting for a defendant to second-guess counsel's assistance after conviction or adverse sentence, and it is all too easy for a court, examining counsel's defence after it has proved unsuccessful, to conclude that a particular act of omission of counsel was unreasonable. Cf. Engle v. Isaac [456 US 107] (1982). A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. Because of the difficulties inherent in making the evaluation, a court must indulge in a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; ..."

33. Learned Additional Standing counsel for the State has furnished details of the number of questions put by the earlier counsel to the prosecution witnesses for showing the performance of the earlier counsel. Moreover, one cannot lose sight of the fact that the Advocate was appointed by the petitioner of his own choice.

34. The only question which remains for consideration is whether the witnesses are required to be recalled for the purpose of further cross

examination while exercising power u/s 311 of the Code of Criminal Procedure. Section 311 of the Code reads as under:-

"311. Power to summon material witness, or examine person present.

Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case."

35. In ***Rajaram Yadav***(supra) relied upon by learned counsel for the appellant also, the question regarding applicability of Section 311 of Cr.P.C was under consideration. The operative portion of the judgment which has bearing on the present petition is reproduced as under:-

"14. A conspicuous reading of Section 311 Code of Criminal Procedure would show that widest of the powers have been invested with the Courts when it comes to the question of summoning a witness or to recall or re-examine any witness already examined. A reading of the provision shows that the expression "any" has been used as a pre-fix to "court", "inquiry", "trial", "other proceeding", "person as a witness", "person in attendance though not summoned as a witness", and "person already examined". By using the said expression "any" as a pre-fix to the various expressions mentioned above, it is ultimately stated that all that was required to be satisfied by the Court was only in relation to such evidence that appears to the Court to be essential for the just decision of the case. Section 138 of the Evidence Act, prescribed the order of examination of a witness in the Court. Order of re-examination is also prescribed calling for such a witness so desired for such re-examination. Therefore, a reading of Section 311 Code of Criminal Procedure and Section 138 Evidence Act, insofar as it comes to the question of a criminal trial, the order of re-examination at the desire of any person under Section 138, will have to necessarily be in consonance with the prescription contained in Section 311 Code of Criminal Procedure. It is, therefore, imperative that the invocation of Section 311 Code of Criminal Procedure and its application in a particular case can be ordered by the Court, only by bearing in mind the object and purport of the said provision, namely, for achieving a just decision of the case as noted by us earlier. The power vested under the said provision is made available to any Court at any stage in any inquiry or trial or other proceeding initiated under the Code for the purpose of summoning any person as a witness or for examining any person in attendance, even though not summoned as witness or to recall or re-examine any person already examined.

Insofar as recalling and re-examination of any person already examined, the Court must necessarily consider and ensure that such recall and re-examination of any person, appears in the view of the Court to be essential for the just decision of the case. Therefore, the paramount requirement is just decision and for that purpose the essentiality of a person to be recalled and re-examined has to be ascertained. To put it differently, while such a widest power is invested with the Court, it is needless to state that exercise of such power should be made judicially and also with extreme care and caution.

15. In this context, we also wish to make a reference to certain decisions rendered by this Court on the interpretation of Section 311 Code of Criminal Procedure where, this Court highlighted as to the basic principles which are to be borne in mind, while dealing with an application under Section 311 Code of Criminal Procedure In the decision reported in Jamatraj Kewalji Govani v. State of Maharashtra, AIR 1968 SC 178, this Court held as under in paragraph 14:

“14. It would appear that in our criminal jurisdiction, statutory law confers a power in absolute terms to be exercised at any stage of the trial to summon a witness or examine one present in court or to recall a witness already examined, and makes this the duty and obligation of the Court provided the just decision of the case demands it. In other words, where the court exercises the power under the second part, the inquiry cannot be whether the accused has brought anything suddenly or unexpectedly but whether the court is right in thinking that the new evidence is needed by it for a just decision of the case. **If the court has acted without the requirements of a just decision, the action is open to criticism but if the court's action is supportable as being in aid of a just decision the action cannot be regarded as exceeding the jurisdiction.**(Emphasis added)

16. In the decision reported in Mohanlal Shamji Soni v. Union of India and Anr., 1991 Supp. (1) SCC 271, this Court again highlighted the importance of the power to be exercised under Section 311 Code of Criminal Procedure as under in paragraph 10:

10... In order to enable the court to find out the truth and render a just decision, the salutary provisions of Section 540 of the Code (Section 311 of the new Code) are enacted where under any court by exercising its discretionary authority at any stage of enquiry, trial or other proceeding can summon any person as a witness or examine any person in attendance though not summoned as a witness or recall or re-examine any person in attendance though not summoned as a witness or recall and re-examine any person already examined who are expected to be able to throw light upon the matter in dispute; because if judgments happen to be rendered on

inchoate, inconclusive and speculative presentation of facts, the ends of justice would be defeated.

17. In the decision in Raj Deo Sharma (II) v. State of Bihar, 1999 (7) SCC 604, the proposition has been reiterated as under in paragraph 9:

9. We may observe that the power of the court as envisaged in Section 311 of the Code of Criminal Procedure has not been curtailed by this Court. Neither in the decision of the five-Judge Bench in A.R. Antulay case nor in Kartar Singh case such power has been restricted for achieving speedy trial. In other words, even if the prosecution evidence is closed in compliance with the directions contained in the main judgment it is still open to the prosecution to invoke the powers of the court under Section 311 of the Code. We make it clear that if evidence of any witness appears to the court to be essential to the just decision of the case it is the duty of the court to summon and examine or recall and re-examine any such person. (Emphasis added)

18. In U.T. Of Dadra and Nagar Haveli and Anr. v. Fatehsinh Mohansinh Chauhan, 2006 (7) SCC 529, the decision has been further elucidated as under in paragraph 15:

15. A conspectus of authorities referred to above would show that the principle is well settled that the exercise of power under Section 311 Code of Criminal Procedure should be resorted to only with the object of finding out the truth or obtaining proper proof of such facts which lead to a just and correct decision of the case, this being the primary duty of a criminal court. Calling a witness or re-examining a witness already examined for the purpose of finding out the truth in order to enable the court to arrive at a just decision of the case cannot be dubbed as "filling in a lacuna in the prosecution case" unless the facts and circumstances of the case make it apparent that the exercise of power by the court would result in causing serious prejudice to the accused resulting in miscarriage of justice. (Emphasis added)

19. In **Iddar and Ors. v. Aabida and Anr.**, AIR 2007 SC 3029, the object underlying under Section 311 Code of Criminal Procedure, has been stated as under in paragraph 11:

11. The object underlying Section 311 of the Code is that there may not be failure of justice on account of mistake of either party in bringing the valuable evidence on record or leaving ambiguity in the statements of the witnesses examined from either side. The determinative factor is whether it is essential to the just decision of the case. The section is not limited only for the benefit of the accused, and it will not be an improper exercise of the

powers of the court to summon a witness under the section merely because the evidence supports the case for the prosecution and not that of the accused. The section is a general section which applies to all proceedings, enquiries and trials under the Code and empowers Magistrate to issue summons to any witness at any stage of such proceedings, trial or enquiry. In Section 311 the significant expression that occurs is 'at any stage of inquiry or trial or other proceeding under this Code'. It is, however, to be borne in mind that whereas the section confers a very wide power on the court on summoning witnesses, the discretion conferred is to be exercised judiciously, as the wider the power the greater is the necessity for application of judicial mind.(Emphasis added)

20. In **P. Sanjeeva Rao v. State of A.P.**, AIR 2012 SC 2242, the scope of Section 311 Code of Criminal Procedure has been highlighted by making reference to an earlier decision of this Court and also with particular reference to the case, which was dealt with in that decision in paragraphs 13 and 16, which are as under:

"13. Grant of fairest opportunity to the accused to prove his innocence was the object of every fair trial, observed this Court in Hoffman Andreas v. Inspector of Customs, Amritsar, (2000) 10 SCC 430. The following passage is in this regard apposite:

In such circumstances, if the new counsel thought to have the material witnesses further examined, the Court could adopt latitude and a liberal view in the interest of justice, particularly when the court has unbridled powers in the matter as enshrined in Section 311 of the Code. After all the trial is basically for the prisoners and courts should afford the opportunity to them in the fairest manner possible.

16. We are conscious of the fact that recall of the witnesses is being directed nearly four years after they were examined-in-chief about an incident that is nearly seven years old. Delay takes a heavy toll on the human memory apart from breeding cynicism about the efficacy of the judicial system to decide cases within a reasonably foreseeable time period. To that extent the apprehension expressed by Mr. Rawal, that the prosecution may suffer prejudice on account of a belated recall, may not be wholly without any basis. Having said that, we are of the opinion that on a parity of reasoning and looking to the consequences of denial of opportunity to cross-examine the witnesses, we would prefer to err in favour of the Appellant getting an opportunity rather than protecting the prosecution against a possible prejudice at his cost. Fairness of the trial is a virtue that is sacrosanct in our judicial system and no price is too heavy to protect that virtue. A possible prejudice to prosecution

is not even a price, leave alone one that would justify denial of a fair opportunity to the accused to defend himself.(Emphasis added)

21. In a recent decision of this Court in Sheikh Jumman v. State of Maharashtra, (2012) 9 SCALE 80, the above referred to decisions were followed.

22. Again in an unreported decision rendered by this Court dated 08.05.2013 in Natasha Singh v. CBI (State) Criminal Appeal No. 709 of 2013, where one of us was a party, various other decisions of this Court were referred to and the position has been stated as under in paragraphs 14 and 15:

"14. The scope and object of the provision is to enable the Court to determine the truth and to render a just decision after discovering all relevant facts and obtaining proper proof of such facts, to arrive at a just decision of the case. Power must be exercised judiciously and not capriciously or arbitrarily, as any improper or capricious exercise of such power may lead to undesirable results. An application under Section 311 Code of Criminal Procedure must not be allowed only to fill up a lacuna in the case of the prosecution, or of the defence, or to the disadvantage of the accused, or to cause serious prejudice to the defence of the accused, or to give an unfair advantage to the opposite party. Further the additional evidence must not be received as a disguise for retrial, or to change the nature of the case against either of the parties. Such a power must be exercised, provided that the evidence that is likely to be tendered by a witness, is germane to the issue involved. An opportunity of rebuttal, however, must be given to the other party.

The power conferred under Section 311 Code of Criminal Procedure must, therefore, be invoked by the Court only in order to meet the ends of justice, for strong and valid reasons, and the same must be exercised with great caution and circumspection.

The very use of words such as 'any Court', 'at any stage', or 'or any enquiry', trial or other proceedings', 'any person' and 'any such person' clearly spells out that the provisions of this section have been expressed in the widest possible terms, and do not limit the discretion of the Court in any way. There is thus no escape if the fresh evidence to be obtained is essential to the just decision of the case. The determinative factor should, therefore, be whether the summoning/recalling of the said witness is in fact, essential to the just decision of the case.

15. Fair trial is the main object of criminal procedure, and it is the duty of the court to ensure that such fairness is not hampered or threatened in any manner. Fair trial entails the interests of the accused, the victim and of the

society, and therefore, fair trial includes the grant of fair and proper opportunities to the person concerned, and the same must be ensured as this is a constitutional, as well as a human right. Thus, under no circumstances can a person's right to fair trial be jeopardized. Adducing evidence in support of the defence is a valuable right. Denial of such right would amount to the denial of a fair trial.

Thus, it is essential that the rules of procedure that have been designed to ensure justice are scrupulously followed, and the court must be zealous in ensuring that there is no breach of the same. (Vide Talab Haji Hussain v. Madhukar Purshottam Mondkar and Anr. , AIR 1958 SC 376; Zahira Habibulla H. Sheikh and Anr. v. State of Gujarat and Ors. ,AIR 2004 SC 3114; Zahira Habibullah Sheikh and Anr. v. State of Gujarat and Ors. , AIR 2006 SC 1367; Kalyani Baskar (Mrs.) v. M.S. Sampooram (Mrs.), (2007) 2 SCC 258; Vijay Kumar v. State of U.P. and Anr. , (2011) 8 SCC 136; and Sudevanand v. State through C.B.I. , (2012) 3 SCC 387.).

23. From a conspectus consideration of the above decisions, while dealing with an application under Section 311 Code of Criminal Procedure read along with Section 138 of the Evidence Act, we feel the following principles will have to be borne in mind by the Courts:

a) Whether the Court is right in thinking that the new evidence is needed by it? Whether the evidence sought to be led in under Section 311 is noted by the Court for a just decision of a case?

b) The exercise of the widest discretionary power under Section 311 Code of Criminal Procedure should ensure that the judgment should not be rendered on inchoate, inconclusive speculative presentation of facts, as thereby the ends of justice would be defeated.

c) If evidence of any witness appears to the Court to be essential to the just decision of the case, it is the power of the Court to summon and examine or recall and re-examine any such person.

d) The exercise of power under Section 311 Code of Criminal Procedure should be resorted to only with the object of finding out the truth or obtaining proper proof for such facts, which will lead to a just and correct decision of the case.

e) The exercise of the said power cannot be dubbed as filling in a lacuna in a prosecution case, unless the facts and circumstances of the case make it apparent that the exercise of power by the Court would result in causing serious prejudice to the accused, resulting in miscarriage of justice.

f) The wide discretionary power should be exercised judiciously and not arbitrarily.

g) The Court must satisfy itself that it was in every respect essential to examine such a witness or to recall him for further examination in order to arrive at a just decision of the case.

h) The object of Section 311 Code of Criminal Procedure simultaneously imposes a duty on the Court to determine the truth and to render a just decision.

i) The Court arrives at the conclusion that additional evidence is necessary, not because it would be impossible to pronounce the judgment without it, but because there would be a failure of justice without such evidence being considered.

j) Exigency of the situation, fair play and good sense should be the safe guard, while exercising the discretion. The Court should bear in mind that no party in a trial can be foreclosed from correcting errors and that if proper evidence was not adduced or a relevant material was not brought on record due to any inadvertence, the Court should be magnanimous in permitting such mistakes to be rectified.

k) The Court should be conscious of the position that after all the trial is basically for the prisoners and the Court should afford an opportunity to them in the fairest manner possible. In that parity of reasoning, it would be safe to err in favour of the accused getting an opportunity rather than protecting the prosecution against possible prejudice at the cost of the accused. The Court should bear in mind that improper or capricious exercise of such a discretionary power, may lead to undesirable results.

l) The additional evidence must not be received as a disguise or to change the nature of the case against any of the party.

m) The power must be exercised keeping in mind that the evidence that is likely to be tendered, would be germane to the issue involved and also ensure that an opportunity of rebuttal is given to the other party.

n) The power under Section 311 Code of Criminal Procedure must therefore, be invoked by the Court only in order to meet the ends of justice for strong and valid reasons and the same must be exercised with care, caution and circumspection. The Court should bear in mind that fair trial entails the interest of the accused, the victim and the society and, therefore, the grant of fair and proper opportunities to the persons concerned, must be ensured being a constitutional goal, as well as a human right."

36. The observations made by Hon'ble Supreme Court in ***Kishore Chand*** (supra) also deserve to be mentioned where it was held as under:-

"13..... the liberty of a citizen is a precious one guaranteed by Article 3 of Universal Declaration of Human Rights and also Article 21 of the Constitution of India and its deprivation shall be only in accordance with law. The accused has the fundamental right to defend himself under Article 10 of Universal Declaration of Human Rights. The right to defence includes right to effective and meaningful defence at the trial. The poor accused cannot defend effectively and adequately. Assigning an experienced defence counsel to an indigent accused is a facet of fair procedure and an inbuilt right to liberty and life envisaged under Article 14, 19 and 21 of the Constitution. Weaker the person accused of an offence, greater the caution and higher the responsibility of the law enforcement agencies.

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Though Article 39A of the Constitution provides fundamental rights to equal justice and free legal aid and though the State provides amicus curiae to defend the indigent accused, he would be meted out with unequal defence if, as is common knowledge the youngster from the Bar who has either a little experience or no experience is assigned to defend him. It is high time that senior counsel practising in the court concerned, volunteer to defend such indigent accused as a part of their professional duty."

37. Even in ***Salamat Ali***(supra), the Division Bench of this Court set aside the impugned judgment of conviction by observing that none can belittle the right of every accused to be fairly and adequately represented in a criminal trial, especially where capital sentence is involved. Counsels play an important role in the resolution of issues in an adversarial system. Every accused has a right to meet the case of the prosecution on even terms. At a criminal trial involving a serious offence, the counsel for the defence has a duty to bring such skill and knowledge so as to make a trial reliable adversarial testing process. Reference was made to ***Turner v. Duncan***, the US 9th circuit Court of Appeals where it was held that no

discernible defence strategy emerged at the trial, the trial could not be relied as having produced a just result.

38. Tested on the anvil of law aforesaid in the instant case, various reasons have been given in the application u/s 311 Cr.P.C. as detailed in para 15(a) to (xx) as to why recalling of the witnesses for further cross examination is necessitated. Keeping in view the well established principle that fair trial is the main object of criminal procedure and it is the duty of the Court to ensure that such fairness is not hampered or threatened in any manner and fair trial includes the grant of fair and proper opportunity to the person concerned and the same must be ensured as this is a constitutional as well as a human right which cannot be jeopardised under any circumstance, as such, in the interest of justice, although recalling of all the prosecution witnesses is not necessary, however in view of the circumstances narrated by learned counsel for the petitioner as detailed in para 15(a) to (xx), for ensuring fair trial, it is deemed proper to recall certain witnesses. Moreover, petitioner is in custody and in case he adopts delaying tactics, it is only he who would suffer. The judgments relied upon by learned Standing counsel in ***Praveen Jain***(supra), ***Raminder Singh***(supra), ***Prakash Chandra***(supra), ***Noorjahan***(supra) and Dr. ***Rajesh Talwar***(supra) were on the factual matrix of the respective cases where application u/s 311 Cr.P.C was dismissed. In ***Praveen Jain***(supra), application for examining handwriting expert in defence on the ground of change in counsel was not allowed on the ground that if the witnesses are allowed to be recalled on such ground there would no finality to the trial. Moreover in that case, the statement of accused was recorded on 14.03.2008 and defence evidence was closed on 26.09.2011 after granting number of opportunities. In ***Noorjahan***(supra), the application

was dismissed because it did not specify material aspect of the case left out in cross examination nor did it indicate what questions were put to the witnesses. In **Dr. Rajesh Talwar**(supra), the application was dismissed on the ground of delaying tactics adopted by the accused, yet the observations made in the case dealt with the issue of fair trial and observed as under:-

*“11. This Court in **Selvi J. Jayalalithaa and Ors. v. State of Karnataka and Ors.** (Writ Petition (Crl.) No. 154 of 2013) decided on 30.9.2013, after referring to its earlier judgments in **Smt. Triveniben v. State of Gujarat** , AIR 1989 SC 1335; **Zahira Habibullah Sheikh (5) v. State of Gujarat**, AIR 2006 SC 1367; **Capt. Amarinder Singh v. Parkash Singh Badal and Ors.** ,(2009) 6 SCC 260; **Mohd. Hussain @ Julfikar Ali v. State** (Govt. of NCT of Delhi), AIR 2012 SC 750; and **Natasha Singh v. CBI** , (2013) 5 SCC 741, dealt with the issue of fair trial observing:*

“28. Fair trial is the main object of criminal procedure and such fairness should not be hampered or threatened in any manner. Fair trial entails the interests of the accused, the victim and of the society. Thus, fair trial must be accorded to every accused in the spirit of right to life and personal liberty and the accused must get a free and fair, just and reasonable trial on the charge imputed in a criminal case. Any breach or violation of public rights and duties adversely affects the community as a whole and it becomes harmful to the society in general. In all circumstances, the courts have a duty to maintain public confidence in the administration of justice and such duty is to vindicate and uphold the 'majesty of the law' and the courts cannot turn a blind eye to vexatious or oppressive conduct that occurs in relation to criminal proceedings.

29. Denial of a fair trial is as much injustice to the accused as is to the victim and the society. It necessarily requires a trial before an impartial judge, a fair prosecutor and an atmosphere of judicial calm. Since the object of the trial 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. Justice should not only be done but should be seem to have been done. Therefore, free and fair trial is a sine qua non of Article 21 of the Constitution. Right to get a fair trial is not only a basic fundamental right but a human right also. Therefore, any hindrance in a fair trial could be violative of Article 14 of the Constitution.

30. Article 12 of the Universal Declaration of Human Rights provides for the right to a fair trial what is enshrined in Article 21 of our Constitution. Therefore, fair trial is the heart of criminal jurisprudence and, in a way, an important facet

of a democratic polity and is governed by rule of law. Denial of fair trial is crucifixion of human rights."

39. That being so, in the interest of justice, the petition is partly allowed. Witnesses No. PW 2, 3, 4, 9, 12, 13, 14, 16, 20, 22, 24, 26 and 27 be recalled for the purpose of further cross examination. Needless to say, it is impressed upon the learned counsel for the petitioner not to repeat any question which has already been put to the witnesses in their cross examination by the earlier counsel. Furthermore, no adjournment will be sought by him on any ground whatsoever. Keeping in view the mandate of Section 309 Cr.P.C, the cross examination will be conducted on day to day basis. It is further clarified that in case for any reason any witness is not available for the purpose of further cross examination, his/her testimony shall be read in evidence as it is. With these directions, the petition stands disposed of. Pending applications, if any, also stand disposed off.

40. It is submitted that the matter is listed before the learned Additional Sessions Judge today at 2 p.m, as such parties are directed to appear before the learned Additional Sessions Judge today at 2 p.m and a date will be fixed by the learned Additional Sessions Judge for recalling the aforesaid witnesses for the purpose of cross examination and thereafter the matter be proceeded in accordance with law.

41. Copy of the judgment be given dasti to the parties under the signature of Court Master. Copy of the judgment be sent to learned Trial Court for information and necessary action.

(SUNITA GUPTA)
JUDGE

MARCH 04 , 2015

rs/as