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

Date of Decision: August 04, 2015

+ **CRL.M.C. 1544/2015**

MOHD TALHA Petitioner
Through: Mr. Salar M. Khan, Advocate

versus

STATE OF NCT OF DELHI Respondent
Through: Mr. Praveen Bhati, Additional
Public Prosecutor for respondent-
State with SI Subhash Chand

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

% **JUDGMENT**
(ORAL)

In FIR No.1/2012 under Sections 308/34 of IPC registered at P.S. Mehrauli, Delhi, petitioner's application under Section 311 of Cr.P.C. for recalling of PW-6 & PW-8, who had remained associated with the Investigating Officer of this case during the course of investigation, stands declined vide impugned order by observing that on earlier occasion, petitioner was accommodated with a similar prayer for adjournment and that there was no justification for the recalling of these witnesses.

At the hearing, learned counsel for petitioner submits that there is lapse on the part of petitioner, but for the said lapse petitioner could not be made to suffer irreparably as the cross-examination of PW-6 & PW-8

is essential for the just decision of the case.

Learned Additional Public Prosecutor for respondent-State draws the attention of this Court to the operative part of the impugned order to point out that there is no infirmity or illegality in it.

Upon hearing and on perusal of the impugned order, I find that instead of closing the opportunity to cross-examine PW-6 & PW-8, trial court ought to have permitted petitioner to cross-examine these two witnesses subject to terms as the cross-examination of these two witnesses has a material bearing on the merits of the case.

Accordingly, the impugned order is quashed and petitioner's application under Section 311 of Cr.P.C. is allowed subject to costs of ₹20,000/- to be deposited by petitioner with *Prime Minister's Relief Fund* within a week from today. Subject to deposit of the costs, petitioner be given one effective opportunity to cross-examine PW-6 & PW-8.

With aforesaid directions, this petition is accordingly disposed of.

(SUNIL GAUR)
JUDGE

AUGUST 04, 2015

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