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

Date of Decision: 31st July, 2015

+ CRL.M.C. 5137/2014 & CrI.M.A.17570/2014

STATE (NCT OF DELHI) Petitioner
Through: Mr. Vinod Diwakar, Additional
Public Prosecutor for State with SI
Vijay Kumar

versus

KRISHAN GOPAL NAGAR Respondent
Through: Mr. Rupinder Dhingra, Advocate
for respondent

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

% **ORDER**
(O R A L)

The facts giving rise to this petition are that in the first instance, respondent-accused had filed application under Section 311 of the Cr.P.C. for recalling of Complainant (*PW-1*), which was disallowed by the trial court and the said order attained finality. Thereafter, petitioner-State had filed similar application under Section 311 of Cr.P.C. for recalling of Complainant (*PW-1*), which was allowed vide order of 9th October, 2012, which was challenged by respondent-accused and the Revisional Court, vide order of 18th February, 2013 allowed the revision petition thereby setting aside order of 9th October, 2012.

At the final hearing, trial court itself found the necessity of

recalling of Complainant (*PW-I*) and vide order of 4th July, 2014, Complainant (*PW-I*) was recalled by the trial court while exercising power under Section 311 of Cr.P.C. *suo motto*. The said order was challenged by respondent-accused and vide impugned order of 19th August, 2014, the learned Revisional Court set aside the order of 4th July, 2014 of the learned trial court by observing that the trial court has not taken into consideration the earlier order of Sessions Court of 18th February, 2013 vide which similar application stood dismissed and so, it was submitted by learned counsel for respondent that there is no substance in this petition and it deserves dismissal.

During the course of hearing, learned Additional Public Prosecutor for State submitted that recalling of Complainant (*PW-I*) is essential for just decision of the case and trial court has rightly recalled him. Whereas, the stand of learned counsel for respondent-accused is that oblivious of earlier order of the Sessions Court of 18th February, 2013, the trial court has erroneously recalled Complainant (*PW-I*).

Upon considering the submissions advanced by both the sides, on perusal of the impugned order, the earlier orders of the courts below and the material on record of this case, this Court finds that there is substantial difference between recalling of a witness at the instance of a party and trial court itself feeling the need for recall of any witness at any stage of trial. So, dismissal of petitioner/ respondent's application for recall of Complainant (*PW-I*) would not operate *res judicata* and the learned Revisional Court vide impugned order has erroneously set aside trial court's order, as it is the prerogative of the trial court to see at the final stage as to whether recall of any witness is essential for just decision

or not. The discretion exercised by trial court in recalling Complainant (PW-1) cannot be faulted with as recall of complainant was earlier declined at early stage of trial and not at the final stage. Hence, the impugned order is rendered unsustainable and is hereby quashed. Accordingly, trial court's order of 4th July, 2014 is restored, as the discretion has been rightly exercised by the trial court at the stage of final hearing.

This petition and the application are disposed of while refraining to comment upon the merits of the case and with a direction to trial court to expeditiously decide the pending trial in FIR No.133/1992 under Section 420/468/471/34 IPC registered at PS Subzi Mandi, Delhi.

(SUNIL GAUR)
JUDGE

JULY 31, 2015

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