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

Date of Decision: March 11, 2015

+ **CRL.M.C. 5420/2014 & CrI.M.A.18490/2014**

SHAM SUNDER Petitioner
Through: Mr. Vikas Arora and Mr. Dheeraj
Manchanda, Advocates

versus

STATE OF NCT OF DELHI Respondent
Through: Mr. Praveen Bhati, Additional
Public Prosecutor for respondent-
State with ASI Bijender Singh

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

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Impugned order of 26th November, 2014 rejects petitioner's application under Section 311 of Cr.P.C. for recalling three witnesses i.e. *Krishan Kumar (PW-3)*, *Jaswant Singh (PW-70)* and *Tarun Kumar (PW-70)* on the ground that the change of counsel is no ground to permit further cross-examination of these witnesses, who have been already cross-examined.

At the hearing, learned counsel for petitioner had drawn the attention of this Court to the copy of deposition of these three witnesses

to submit that the cross-examination is necessary because the evidence led by them is virtually going unchallenged to the detriment of petitioner.

It is submitted that these three witnesses have to be briefly cross-examined on material points and the cross-examination of each of these witnesses would not take more than 30-40 minutes and it would be done on the same day.

Learned Additional Public Prosecutor for respondent-State supports the impugned order and submits that the petitioner is just delaying the trial of this case, which is pending for the last about nine years.

Learned counsel for petitioner submits that the pendency of this FIR case is not due to petitioner, as petitioner has not sought unnecessary adjournments and if petitioner is not allowed to cross-examine these three material witnesses, then it would result in miscarriage of justice.

Upon hearing and on perusal of the impugned order and the copies of the deposition of three witnesses (*Annexure P-4 colly.*), I find that the brief cross-examination of these three witnesses is essential for the just decision of this case. Consequentially, the impugned order is quashed and petitioner's application under Section 311 of Cr.P.C. is allowed subject to cost of ₹ 20,000/-. Upon these three witnesses appearing before the trial court, they be cross-examined within the time frame as claimed by petitioner and the cross-examination of these witnesses be positively concluded on the date they appear.

Upon realization of aforesaid costs of ₹20,000/-, ₹5,000/- each be disbursed to these three witnesses after their cross-examination by petitioner on the day of cross-examination. The remaining amount of

₹5,000/- is towards the cost of proceedings.

With aforesaid directions, this petition and the application are disposed of.

(SUNIL GAUR)
JUDGE

MARCH 11, 2015

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