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

Date of Order: August 27, 2015

+ CRL.M.C. 3261/2015

ASHIS JAIN

..... Petitioner

Through: Mr. Vijay Chandra Jha and Mr.
Kaushal Chandra Jha, Advocates

versus

GOVT OF NT OF DELHI & ANR

.....Respondents

Through: Mr. P.L. Sharma, Additional
Public Prosecutor for respondent-
State with SI Vijay Kaushik
Mr. Sonal Sinha, Advocate for
Respondent No.2

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

ORDER

(ORAL)

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Petitioner is facing trial in FIR No.612/2004 under Section 406/498-A IPC registered at Police Station R.K.Puram, Delhi and is aggrieved by rejection of his application under Section 311 Cr.P.C. for recalling of respondent No.2-complainant (PW-1). Petitioner's application has been dismissed on the ground that despite several opportunities, petitioner has not come forward to cross examine respondent No.2-complainant in a decade old case and has not deposited the cost imposed.

At the hearing, learned counsel for petitioner has placed on record certified copies of the order-sheets of trial court to show that subsequent to passing of the impugned order, cost of ₹5,000/- has been deposited on

13th November, 2014 and respondent No.2-complainant has not been cross examined at all and if impugned order is not set aside it would cause great prejudice to petitioner.

Learned counsel for respondent No.2-complainant supports the impugned order and submits that petitioner is just prolonging the proceedings in this case.

Upon hearing and on perusal of the impugned order and material on record, I find that respondent No.2-complainant has not been cross examined at all. Rejection of petitioner's application under Section 311 Cr.P.C. on the ground of delay in trial by itself is not sufficient as it is to be seen whether cross examination of respondent-complainant is essential for just decision of this case. On account of delay caused, respondent-complainant can be always compensated by payment of cost. In the considered opinion of this Court, cross examination of respondent-complainant is essential for a fair trial.

Consequently, impugned orders dated 26th February, 2015 and 20th May, 2015 are hereby quashed and petitioner's application under Section 311 Cr.P.C. is allowed subject to cost of ₹25,000/- to be paid to respondent-complainant at the time she appears for her cross examination. It is made clear that one effective opportunity be granted to petitioner to properly cross examine respondent-complainant.

With aforesaid observations, this petition is disposed of.

(SUNIL GAUR)
JUDGE

AUGUST 27, 2015

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